MONTANA LEGISLATIVE HISTORY

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H. Committee on	Human Services		S. Committee on	Public Health	
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Date Out	3/16	✓ C		2/15	✓

Did this bill originate in an interim committee? ____ Yes ✓ No

Committee _____ Report _____

SENATE BILL NO. 236

INTRODUCED BY Waterman Cobb

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MEDICAID; PROVIDING FOR CONSERVATION OF MEDICAID FUNDS BY IMPOSITION OF RESTRICTIONS ON ELIGIBILITY AND BY ALLOWING OR REQUIRING RECOVERY OF MEDICAID EXPENSES FROM INDIVIDUALS AND ESTATES; PROVIDING FOR LIENS AGAINST ESTATES AND PROPERTY OF OTHER INDIVIDUALS; PROVIDING FOR UNDUE HARDSHIP EXCEPTIONS; AUTHORIZING RULEMAKING BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTIONS 53-6-143 AND 53-6-144, MCA; REPEALING SECTIONS 53-2-601, 53-2-611, AND 53-5-401, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] grant the department of social and rehabilitation services rulemaking authority to implement the provisions of this bill.

The legislature intends that the department of social and rehabilitation services adopt rules that are reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should include but are not limited to rules addressing the following:

(1) a description of the circumstances considered to constitute an undue hardship;

(2) the procedures by which an individual may seek an undue hardship exception;

(3) the persons entitled to an undue hardship exception; and

(4) whether the exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in this part, unless expressly provided otherwise, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(2) "Recipient" means an individual who has been determined by a medicaid agency to be eligible for medicaid benefits, whether or not the individual has actually received a benefit, or an individual who has received benefits, whether or not that person has been determined to be eligible.

(3) "Recoverable medical assistance" means a payment pursuant to this part, including but not limited to a payment made for items or services provided to and insurance premiums, deductibles, and coinsurance paid on behalf of a recipient who:

(a) during the recipient's lifetime, was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease and, with respect to that institutionalization, the department determined under [section 8] that the person was not reasonably expected to be discharged and return home; or

(b) was at least 55 years of age or younger if allowed by 42 U.S.C. 1396p, as may be amended, when the item or service was provided or when the insurance premium, deductible, or coinsurance was paid.

(4) "Recovery" means legal action brought for the payment or repayment of recoverable medical assistance or amounts of money paid for other purposes.

NEW SECTION. **Section 2. Period of ineligibility for medical assistance when assets disposed of for less than fair market value -- undue hardship exception -- department to adopt rules.** (1) The department shall, in accordance with 42 U.S.C. 1396p, as may be amended, and implementing federal regulations and policies, impose upon an applicant or recipient a period of ineligibility for medical assistance under this part when the applicant or recipient or the spouse of either directly or indirectly disposes of any assets for less than fair market value during the applicable 3-year, 5-year, or other period provided by 42 U.S.C. 1396p, as may be amended, or by other federal law.

(2) A period of ineligibility for medical assistance may not be imposed upon an applicant or recipient under this section to the extent that the department determines, in accordance with procedures specified by department rule, that the denial of eligibility would cause an undue hardship as defined by department rule.

(3) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies to implement this section. The rules adopted under this section must include but are not limited to rules addressing the following:

(a) a description of the circumstances considered to constitute an undue hardship;

(b) the procedures by which an individual may seek an undue hardship exception;

(c) the persons entitled to an undue hardship exception; and

(d) notice and opportunity for a hearing regarding imposition of a period of ineligibility or denial of an undue hardship exception.

(4) Nothing in [section 1], 53-6-143, 53-6-144, [sections 5 through 26], or this section is intended to prohibit the department from adopting rules consistent with federal law that provide for a period of ineligibility for public assistance programs other than medical assistance when an applicant or recipient directly or indirectly disposes of assets for less than fair market value.

Section 3. Section 53-6-143, MCA, is amended to read:

"53-6-143. ~~Limitations on~~ Medical assistance liens and recoveries. (1) ~~An~~ Except as provided in this section, the department may not impose a lien upon the property of an applicant for or recipient of

medical assistance ~~may not be required to execute an agreement creating a lien on his real property~~.

(2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed against the real or personal property of ~~an individual~~ a medicaid applicant or recipient prior to ~~his~~ the applicant's or recipient's death ~~for recovery of medical assistance paid or to be paid on his behalf under this chapter~~ only:

(a) pursuant to a judgment of a court for recovery of medical assistance ~~incorrectly~~ paid on behalf of the recipient; ~~or~~

(b) on a third-party recovery as provided in 53-2-612; or

(c) as provided in [sections 8 through 25].

(3) ~~(a)~~ The department may recover medical assistance correctly paid on behalf of a recipient only~~:~~

~~(i)~~ as provided in ~~53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before he reached age 65; or~~

~~(ii) as provided in~~ [sections 5 through 7], [sections 8 through 25], or 53-2-612 or as provided in a written agreement between the department and the recipient or the recipient's representative pursuant to 42 U.S.C. 1382b(b).

~~(b) The department may recover under 53-2-611 only:~~

~~(i) after the death of the recipient's surviving spouse, if any; and~~

~~(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and totally disabled.~~

~~(4) Recoveries must be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this section are hereby extended to provide for the recovery of all medical assistance paid under this part and likewise to all medical aid to the aged assistance paid by the department of social and rehabilitation services during the period of time July 1, 1965, through June 30, 1967.~~

(4) Except as otherwise specifically provided by 53-6-144, [sections 1, 2, and 5 through 26], and this section, the department may pursue recovery under any section or combination of sections as may be applicable in a particular case. However, the department may not recover pursuant to [sections 5 through 7] or [sections 8 through 25] more than the total amount of recoverable medical assistance paid on behalf of a recipient, plus any applicable costs, interest, or other charges specifically allowed by law. The fact

that the department has or may have a lien on particular property does not preclude the department from pursuing recovery under another section against other assets of the recipient or assets of another person as provided in 53-6-144, [sections 1, 2, and 5 through 26], and this section."

Section 4. Section 53-6-144, MCA, is amended to read:

"**53-6-144. Relative's responsibility.** ~~The~~ Except as otherwise provided in [sections 5 through 26] and the provisions of other parts of this title~~, as amended, notwithstanding~~, the only relatives that ~~can~~ may be held responsible for payment of medical assistance under the program are the husband or wife of the individual, the parents of children under ~~age~~ 18 years of age, and the parents of blind or disabled persons over ~~age~~ 18 years of age."

NEW SECTION. **Section 5. Recovery of medicaid benefits after recipient's death.** (1) After the death of a recipient, the department shall execute and present a claim:

(a) against the recipient's estate, within the time specified in the published notice to creditors in the estate proceeding, for the total amount of recoverable medical assistance paid to or on behalf of the recipient; and

(b) against a person who has received property of the recipient by distribution or survival for an amount equal to the recoverable medical assistance paid on behalf of the recipient or the value of the property received by the person from the recipient by distribution or survival, whichever is less. The amount recoverable from a person with respect to property of the recipient must be reduced by the value of any property transferred to the person for less than full market value for which a period of ineligibility was imposed under [section 2] against the recipient during the recipient's life. The department may bring an action in district court to collect upon a claim under this subsection (1).

(2) A department claim under subsection (1) must include notice of the right to seek an undue hardship exception under rules adopted by the department in accordance with subsection (7).

(3) (a) Notwithstanding any statute of limitations or other claim presentation deadline provided by law, a department claim against an estate is not barred for lack of timely presentation if it is presented in the probate proceeding within the time specified in the published notice to creditors.

(b) An action to collect a claim under subsection (1)(b) must be commenced within 3 years of the later of the recipient's death or the closing of the recipient's estate.

(4) (a) For purposes of this section, property of a deceased recipient received by distribution or survival is any real or personal property or other assets in which the recipient had any right, title, or interest immediately prior to the time of death, including but not limited to assets passing to one or more survivors, heirs, assignees, or beneficiaries of the deceased recipient through joint tenancy, tenancy in common, right of survivorship, conveyance by the recipient subject to life estate, living trust, or other arrangement. For purposes of this section, property is not received by distribution or survival to the extent that the person received the property or property interest for consideration equal to the fair market value of the property or property interest received.

(b) Property received by distribution includes but is not limited to:

(i) property from a deceased recipient's estate distributed to a person through a probated estate or a small estate administration procedure; and

(ii) property from a deceased recipient's estate otherwise distributed to or in the possession of a person through any other procedure or when a legal procedure for distribution has not been followed.

(c) Assets of a deceased recipient's estate and property of a deceased recipient received by distribution or survival are not exempt from recovery under this section because the assets or property were or may have been considered by the department as exempt income or resources for the purpose of determining eligibility for medical assistance during the recipient's lifetime.

(5) (a) The department may seek recovery under subsection (1)(a) or (1)(b), or both, with respect to a deceased recipient until its claim is satisfied in full. Upon full satisfaction of its claim, the department may not seek further recovery and shall provide appropriate releases to the deceased recipient's estate and to other affected persons.

(b) An estate or other person is not entitled to a reduction or waiver of the department's claim on the grounds that there is or may be another person from whom recovery may be made under this section.

(6) The department may waive recovery under this section if it determines that recovery would not be cost-effective. In determining whether recovery would be cost-effective for purposes of this subsection, the department may consider but is not limited to consideration of the following factors:

(a) the estimated cost of recovery;

(b) the amount reasonably likely to be recovered;

(c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and

(d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of this section.

(7) (a) Upon presentation or assertion of a claim by the department under this section, the personal representative of the estate or another affected person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery based on undue hardship. The department shall waive its recovery under this section in whole or in part if it determines that recovery would result in undue hardship as defined by department rule.

(b) The department shall adopt rules that are consistent with 42 U.S.C. 1396p, as may be amended, and that implement federal regulations and policies, establishing procedures and criteria for undue hardship exceptions. The rules adopted under this section must include but are not limited to rules addressing the following:

(i) a description of the circumstances considered to constitute an undue hardship;

(ii) the procedures by which an individual may seek an undue hardship exception;

(iii) the persons entitled to an undue hardship exception; and

(iv) whether an exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted.

(c) If a person is aggrieved by a department determination on an application for an undue hardship exception, the person may assert a claim of entitlement to an undue hardship exception in any court proceeding on a department petition for allowance of an estate claim or for recovery of an amount due under this section. When a person claims entitlement to an undue hardship exception in the proceeding, the court shall make a determination on the claim for an exception based upon the department rules adopted in accordance with this section. Department denial of all or any part of the relief requested in an exception application under this section may be reviewed by a district court only as provided in this subsection (c). Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the department's rules.

(8) (a) Except as provided in subsection(8)(b), if the requirements of this section are met, the department may collect upon its claim.

(b) The department may not recover under this section while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection (b) does not preclude the department from recovering

from the recipient's estate after the death of the surviving spouse or child.

(9) All money recovered under this section from any source must be distributed to the state general fund and to the United States as required by applicable state and federal laws and regulations.

NEW SECTION. **Section 6. Payment of certain funds of deceased recipient to department.** (1) (a) A nursing facility or a person, other than a financial institution, holding personal funds of a deceased nursing facility resident who received medicaid benefits at any time shall, within 30 days following the resident's death, pay those funds to the department.

(b) A nursing facility may satisfy a debt owed by the deceased resident to the facility from the deceased resident's personal funds that are held by the nursing facility and that would have been payable to the facility from the resident's funds. The facility shall pay the remaining funds to the department as required by this section.

(c) Funds paid to the department under this section are not considered to be property of the deceased resident's estate, and [section 5] does not apply to recovery of the funds by the department.

(2) For purposes of this section, a nursing facility is holding personal funds of a resident if the facility:

(a) maintains possession of the funds in the facility; or

(b) as the recipient's trustee or representative, has deposited the resident's funds in an individual or shared account in a financial institution.

(3) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds.

NEW SECTION. **Section 7. Payment of excess burial funds or assets to department.** (1) After the death of a person who at any time received medicaid benefits, a mortician, funeral director, or other person, including but not limited to the decedent's spouse, heir, devisee, or personal representative, who holds funds or other property that was specifically designated and set aside for paying for the disposition of the decedent's remains and for related expenses shall, after paying for the disposition and related expenses, pay all remaining funds to the department within 30 days following the burial, cremation, or other final disposition of the decedent's remains. The funds must be paid to the department regardless of any

provision in a written contract, trust, or other agreement entered into on or after [the effective date of this section], directing a different disposition of the funds. Funds paid to the department under this section are not considered to be property of the decedent's estate, and [section 5] does not apply to recovery of the funds by the department.

(2) The department shall apply any funds received under this section proportionately to the federal and state shares of recoverable medical assistance and shall pay any remaining amount to a person entitled by law to the funds.

NEW SECTION. **Section 8. Department lien upon real property of certain medicaid recipients -- conditions.** (1) Following notice and opportunity for hearing as provided in [section 9], the department shall impose a lien upon the real property, including the home, of an institutionalized recipient of recoverable medical assistance to secure the assets of the recipient for recovery of medical assistance paid on behalf of the recipient prior to, on, or after the imposition of the lien if:

(a) the recipient has been admitted to a nursing facility, an intermediate care facility for the mentally retarded, or an institution for mental disease;

(b) the property upon which a lien is being imposed is the recipient's home and the home is not lawfully resided in by:

(i) the recipient's spouse;

(ii) the recipient's child who is under 21 years of age, blind, or permanently and totally disabled; or

(iii) the recipient's sibling who has an ownership interest and equity in the recipient's home and who was residing in the recipient's home for a period of at least 1 year immediately prior to the recipient's institutionalization; and

(c) the recipient has been determined by the department, pursuant to subsection (2), to be permanently institutionalized.

(2) A recipient is permanently institutionalized for purposes of subsection (1)(c) if the department determines that the recipient cannot reasonably be expected to be discharged from the facility and to return home. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for 6 months or longer without a

discharge plan. The recipient's institutionalization for a period of 6 months or longer without a discharge plan does not give rise to the presumption if the facility was required by law to adopt a discharge plan but failed to do so. A recipient or a recipient's representative who alleges that there is a reasonable expectation of discharge from the facility and a return home has the burden of demonstrating the reasonable expectation. The reasonable expectation must be established based upon medical evidence and medical opinion. A declaration by the recipient or a recipient's representative that the recipient intends to be discharged from the facility and to return home is not alone sufficient to establish that there is a reasonable expectation of discharge from the facility and a return home.

(3) For purposes of this section, real property of a recipient includes any interest in real property that may be subject to a judgment lien.

NEW SECTION. **Section 9. Notice of intent to impose lien -- opportunity for hearing.** Before imposing a lien under [section 8], the department shall provide the recipient 30 days' written notice of its determination under [section 8(1)(c)], of its intent to impose a lien, and of an opportunity for a hearing pursuant to the department's hearing procedures under Title 2, chapter 4, part 6.

NEW SECTION. **Section 10. Contents of lien document -- scope of obligation secured.** (1) The lien must contain the name and address of the recipient who owns an interest in the property, a legal description of the property, and an address and telephone number of the office or representative of the department who can provide more information about the lien. The lien applies only to the property described in the lien.

(2) The lien need not be executed by or on behalf of the medicaid recipient, but it must be executed by an authorized agent or employee of the department. The execution must be acknowledged as provided in 70-21-203.

(3) The lien need not state the specific amount of medical assistance repayment owed. The lien is sufficient to secure repayment of past, current, and future recoverable medical assistance if the lien states that:

(a) the lien is imposed under this section to secure the described property for recovery of medical assistance paid on behalf of the recipient prior to, on, and after the date of the lien; and

(b) the amount paid for recoverable medical assistance is due upon sale, transfer, or exchange of

any right, title, or interest of the recipient in the property or upon the recipient's death.

NEW SECTION. **Section 11. Filing of lien -- effect of filing -- priority -- renewal -- dissolution of lien.** (1) The lien must be filed in the office of the clerk and recorder in the county in which the real property is located.

(2) Filing of the lien constitutes legal notice of the lien to all persons, including subsequent purchasers, encumbrancers, mortgagees, and other lienholders. Upon filing, the lien is prior to any earlier unrecorded interest or claim and is prior to any subsequent interest or claim, whether or not recorded. The lien is subject to any unpaid property taxes, any prior recorded mortgage, or any other prior recorded encumbrance, interest, or claim. For purposes of recovery under [sections 8 through 25] a sale, transfer, or exchange of the property by the recipient is considered a relinquishment of any homestead exemption under 70-32-201 and 70-32-202 of the recipient in the property subject to the lien.

(3) Except as provided in [sections 8 through 25], the lien has the effect of a judgment lien when the lien is filed. For purposes of provisions of state laws relating to judgment liens, the department is considered the judgment creditor and the recipient is considered the judgment debtor.

(4) After filing, the lien remains effective for a period of 6 years unless earlier satisfied, released, or dissolved. The department may renew a lien for one or more additional 6-year period.

(5) If the recipient is discharged from the facility and returns home, the lien dissolves and is no longer effective unless a new lien is later imposed in accordance with [sections 8 through 25]. Following the recipient's discharge and return home, the department shall upon written request file a release of lien in the clerk and recorder's office. Dissolution of the lien under this subsection does not preclude the department from recovering under [section 5, 6, or 7].

(6) If the lien is imposed pursuant to [section 8] on the recipient's interest in jointly owned property that is subject to a right of survivorship, upon the recipient's death, the recipient's interest passes to the survivor, subject to the lien imposed pursuant to [section 8].

NEW SECTION. **Section 12. Recovery of medical assistance secured by lien -- application for issuance of writ of execution.** (1) After the recipient's death or upon the sale, transfer, or exchange of any right, title, or interest of the recipient in the property, the department may file with the clerk of the district court in the county in which the real property is located an application for issuance of a writ of

execution for levy on the real property described in the lien. The levy may be for the amount of recoverable medical assistance paid on behalf of the recipient prior to, on, and after the date of the lien, including amounts paid up to the date of sale of the property, plus interest and costs as provided by law. Costs do not include attorney fees.

(2) The application for the writ must be sworn and must contain the following:

(a) the name of the recipient, a legal description of the real property, and a description of the recipient's interest in the property;

(b) a statement that the department has imposed a lien upon the property under [section 8];

(c) a statement that the lien complies with the requirements of [sections 8 through 25];

(d) the date upon which the lien was filed and the office in which it was filed;

(e) a description of the sale, transfer, or exchange that entitles the department to recover or a statement that the recipient or, if applicable, the recipient's spouse has died and the date of the death;

(f) a statement that the lien has not dissolved under [section 11(5)];

(g) the amount of recoverable medical assistance; the amount of any unreimbursed taxes, insurance costs, maintenance costs, or other costs paid under [section 23]; and, if applicable, a statement that additional amounts may be paid up to the time that the property is sold in satisfaction of the lien;

(h) a statement that the total amount due has not been paid as of the date of the application for the writ;

(i) a statement that recovery is not prohibited by this section;

(j) the names and addresses of all persons who have a recorded interest in the property, including a recipient or recipient's estate, co-owner, purchaser, grantee, encumbrancer, mortgagee, and lienholder; and

(k) a request that a writ of execution be issued for sale of the described property if an action is not filed within the time provided for in [section 14].

(3) The filing of an application under this section for a writ of execution is not the filing of a legal action, and the requirements applicable to legal actions do not apply to the application or application proceedings.

NEW SECTION. **Section 13. Notice of application -- proof of notice -- request for issuance of writ of execution.** (1) The department shall provide notice, as required by this section, of the filing of the

application for a writ of execution pursuant to [section 12] to all persons having a recorded interest in the property or residing lawfully on the property.

(2) The notice must contain a description of the property and must state that the department has a lien under [section 8] upon the described property, that the department has filed an application for a writ of execution seeking sale of the property, and that a writ will be issued unless an action challenging issuance of the writ has been filed in accordance with [section 14] within 60 days of the date of mailing or service of notice or first publication of notice. The department shall include with the notice a copy of the application for the writ. The notice must also include notice of the right to seek an undue hardship exception as provided in [section 17].

(3) (a) The department may mail a copy of the notice, postage prepaid and return receipt requested, to the name and address stated in the recorded instrument creating each person's interest in the property or, in the case of a person residing on the property, to the address of the residence on the property. Mailing as provided in this subsection (a) is sufficient notice to the addressee if the return receipt is returned to the department and indicates that the notice was received by or on behalf of the addressee.

(b) If the return receipt is not returned to the department indicating that the notice was received by or on behalf of the addressee, the department shall attempt with reasonable diligence to locate the addressee and to personally serve or mail notice to that person.

(c) If after the exercise of reasonable diligence the department is unable to locate the person owning the interest in the property, the department shall publish the notice required by subsection (2) three times, once each week for 3 successive weeks, in a newspaper published in the county in which the property is located if a newspaper is published in the county. If a newspaper is not published in the county, then publication must be in a newspaper having a general circulation in the county.

(d) With respect to a person residing lawfully on the property but having no recorded interest in the property, the notice may be delivered to the residence and delivery is sufficient notice as to that person.

(e) In the alternative, the notice and application may be personally served upon any person entitled to notice under this section.

(4) (a) After giving notice as required by this section, the department shall file with the clerk of court an affidavit describing:

(i) the manner in which notice has been provided to each person entitled to notice;

(ii) the date of mailing, personal service, or first publication of the notice; and

(iii) the date by which each person is required to file an action to challenge issuance of the writ of execution.

(b) The department shall attach to the affidavit the return receipt, the affidavit of personal service, the affidavit of publication, or other proof of service of the notice. If no action has been filed within the time required by [section 14], the affidavit must so state and may request immediate issuance of the writ.

NEW SECTION. **Section 14. Action to challenge issuance of writ of execution.** A person with a recorded interest in the real property described in an application filed under [section 12], including the recipient or recipient's estate or a co-owner, purchaser, grantee, encumbrancer, mortgagee, or lienholder, or any person described in [section 8(1)(b) or 15(2) or (3)], may, within 60 days of mailing or service of notice or first publication of notice as provided in [section 13], file an action in the district court in the county in which the real property is located challenging the requested issuance of a writ of execution. The court shall determine the validity or invalidity of the department's lien and order appropriate relief, including issuance of the writ or denial of the application for issuance of the writ.

NEW SECTION. **Section 15. Department right of recovery -- limitations.** (1) Except as provided in [section 17] and this section, the department may collect upon its lien as provided in [sections 8 through 25].

(2) The department may not recover upon a lien imposed on the recipient's home under [section 8] while the recipient's sibling or child who has resided lawfully and continuously in the home for at least 1 year immediately before the recipient's institutionalization continues to lawfully reside in the home. This subsection does not preclude the department from recovering under [section 5, 6, or 7].

(3) The department may not recover on a lien imposed under [section 8] while there is a surviving spouse of the recipient or while there is a surviving child of the recipient who is under 21 years of age, blind, or permanently and totally disabled. This subsection does not preclude the department from later recovery in accordance with [section 18].

NEW SECTION. **Section 16. Payment of amount due -- periodic payments -- substitute security.** (1) If the total amount due to the department to satisfy a lien imposed under [sections 8 through 25] is paid, the department may not file an application under [section 12], shall withdraw its application if the

application has already been filed, or shall instruct the sheriff to cancel the sale proceedings.

(2) In lieu of applying for a writ of execution, the department may agree with the heirs or devisees of the recipient to accept periodic payments for the repayment of recoverable medical assistance or may agree with the recipient's surviving spouse to accept substitute security and partial payment. The department may agree to periodic payment of substitute security if the terms of agreement, including security for repayment, are acceptable to the department and if the agreement does not reduce the amount due or the likelihood of recovering the amount due. The department may delay filing an application for issuance of a writ of execution for purposes of conducting negotiations for an agreement in lieu of execution.

NEW SECTION. **Section 17. Waiver of recovery in cases of undue hardship -- rulemaking.** (1) (a) A person with a recorded interest in real property subject to a lien under [sections 8 through 25] or any other interested person may apply to the department, in accordance with procedures established by department rule, for a waiver of recovery because of undue hardship. The department shall waive its recovery under this section, in whole or in part, if it determines that recovery would result in undue hardship as defined by department rule.

(b) The department shall adopt rules, consistent with 42 U.S.C. 1396p, as may be amended, and implementing federal regulations and policies, establishing procedures and criteria for granting undue hardship exceptions under this section. The rules must include but are not limited to rules addressing the following:

(i) a description of the circumstances considered to constitute an undue hardship;

(ii) the procedures by which an individual may seek an undue hardship exception;

(iii) the persons entitled to an undue hardship exception; and

(iv) whether an exception is partial or temporary and the circumstances under which a partial or temporary exception may be granted.

(c) A person aggrieved by a department determination on an application for an undue hardship exception may assert a claim of entitlement to an undue hardship exception in an action filed under [section 14] to challenge issuance of the writ. If a person claims entitlement to an undue hardship exception as part of that action, the court shall make a determination on the undue hardship claim in accordance with the department's rules adopted pursuant to this section. Department denial of all or any part of the relief

requested in an application for an undue hardship exception under this section may be reviewed by a district court only through filing of an action as provided in this subsection (c). Denial does not grant a right to a contested case hearing or a right to judicial review under the Montana Administrative Procedure Act or the department's rules.

(2) The department may waive recovery of recoverable medical assistance secured by a lien imposed under [section 8] if the department determines that recovery would not be cost-effective. In determining whether recovery would be cost- effective, the department may consider but is not limited to consideration of the following factors:

(a) the estimated cost of recovery;

(b) the amount reasonably likely to be recovered;

(c) the likelihood that recovery by the department will cause a person to become eligible for public assistance; and

(d) the importance of the case or the issues in the case and the need for judicial interpretation of issues that may recur with respect to the administration or implementation of [sections 8 through 25].

NEW SECTION. **Section 18. Delay in recovery -- sale subject to lien.** (1) If the department is precluded by [section 15(2) or (3)] from recovery upon a lien imposed under [sections 8 through 25], the department shall maintain the lien in place and upon elimination of the condition that precluded recovery, the department may recover under this section. The department may not file an application for issuance of a writ of execution to recover under this subsection more than 3 years after elimination of the last condition that precluded recovery.

(2) If upon sale, transfer, or exchange of property subject to a lien imposed pursuant to [sections 8 through 25] the department is precluded by [section 15(2) or (3)] from recovering upon the lien, the lien remains in effect, subject to renewal as provided in [section 11], and the sale, transfer, or exchange is also subject to the lien.

NEW SECTION. **Section 19. Spouse's limited exemption from lien.** (1) Subject to Title 70, chapter 32, a recipient's surviving spouse who owns a home or an interest in a home in which the spouse resides that is subject to a lien imposed under [sections 8 through 25] is, upon sale, transfer, or exchange of the home, entitled to an exemption from the department's lien in an amount determined in accordance

with this section. The exemption is in the form of:

(a) a partial release of the department's lien if the exemption amount is less than the full amount of the department's lien; or

(b) a full release of the department's lien if the exemption amount is equal to or greater than the full amount of the department's lien.

(2) The amount of the exemption is the lesser of an amount equal to:

(a) the fair market value of the interest in the home that the surviving spouse received from the recipient by distribution or survival; or

(b) $100,000 minus the total fair market value of all of the surviving spouse's assets, other than the interest in the home, that the surviving spouse received from the recipient by distribution or survival. For purposes of this section, the surviving spouse's assets do not include personal property that is exempt from execution under Title 25, chapter 13, part 6.

(3) The department may by rule require a surviving spouse to file an application for the exemption and to provide information, documentation, and verification regarding the applicant's assets and the fair market value of assets. The department shall provide the applicant notice of its determination on the application and of the opportunity for a hearing pursuant to Title 2, chapter 4, part 6.

(4) Upon determination by the department that the applicant is entitled to an exemption, the department shall provide to the applicant an appropriate full or partial release in the amount of the exemption.

NEW SECTION. **Section 20. Issuance of writ of execution by clerk of court.** (1) If the requirements of subsection (2) are met, the clerk of court shall issue a writ of execution specifying the property to be levied upon, the amount due as of the date of filing of the application, and a statement that additional amounts may be due up to and through the date of the sale.

(2) The clerk shall issue the writ if:

(a) an action has not been filed under [section 14] within 60 days of mailing, service, or first publication of notice, as provided in [section 13]; or

(b) the department has filed an affidavit meeting the requirements of [section 13(4)]; and

(c) (i) the department has filed a sworn application containing the statements required by [section 12]; or

(ii) the court has ordered the issuance of the writ in an action under [section 14].

NEW SECTION. **Section 21. Effect of sale -- title acquired.** The purchaser of property pursuant to a writ of execution issued under [sections 8 through 25] acquires the right, title, interest, and claim that the recipient had at the time the lien was imposed, subject only to any right, title, interest, or claim arising from an instrument recorded prior to the department's lien under [section 8] and to any unpaid property taxes. The sale is absolute and is not subject to any period of redemption allowed by Title 25, chapter 13, part 8, or other law.

NEW SECTION. **Section 22. Disposition of sale proceeds -- application of recovered medical assistance.** (1) The proceeds of a sale of property sold pursuant to a writ of execution issued under [section 20] must be distributed in the following order:

(a) as satisfaction of any unpaid property taxes and prior recorded interests as described in [section 11(2)];

(b) as payment of any claims under [section 23(3) and (4)];

(c) to the department for application to any costs incurred under [section 23(1) and (2)] or incurred in collection;

(d) to the department for recoverable medical assistance.

(2) The department shall apply any funds received under subsection (1)(d) proportionately to the federal and state shares of recoverable medical assistance.

(3) Any excess funds remaining after application of proceeds to recoverable medical assistance must be paid to the recipient, if living, or otherwise to the recipient's representative or successor in interest.

NEW SECTION. **Section 23. Action by department or other person to preserve property subject to lien -- recovery of costs.** (1) The department may, in its discretion, take any action it considers necessary to prevent waste or loss or to preserve the value of property subject to a lien under [sections 8 through 25], including but not limited to the following:

(a) the payment of any unpaid taxes on the property;

(b) the purchase or renewal of insurance coverage on the property and the payment of necessary insurance premiums;

(c) the ordering of and payment for necessary repairs and maintenance on the property; and

(d) if the property is unoccupied, the rental or lease of the property and the application of any receipts first to unpaid property taxes, insurance, and maintenance and repair and, second, any remaining amount toward repayment of recoverable medical assistance.

(2) The department's reasonable costs and expenses to prevent waste or loss or to preserve the value of the property are secured by the lien imposed under [section 8] and may be recovered in addition to all other amounts secured by the lien.

(3) A person who, after the institutionalization or death of the recipient and after the institutionalization of the recipient's surviving spouse, if any, paid real property taxes, homeowner's insurance premiums, or reasonable costs of necessary maintenance or repairs on behalf of the recipient or recipient's spouse, with respect to property subject to a lien under [sections 8 through 25], has a claim against the proceeds of a sale of the property under writ of execution issued pursuant to [section 20] for recovery of any amounts paid for those purposes. The claim must be supported by written documentation that clearly demonstrates the amount of each payment, the purpose of each payment, and the services and items purchased with each payment. A claim for reimbursement made under this subsection is prior to the department's lien imposed under [section 8].

(4) The amount of a claim made under subsection (3) must be reduced by:

(a) the amount of any rents and profits from the property paid after the institutionalization or death of the recipient and the institutionalization of the recipient's surviving spouse, if any;

(b) the value of any property that the person with a claim under subsection (3) will receive by distribution or survival from a deceased recipient if the recipient did not leave a surviving spouse; and

(c) the value of any property that the person with a claim under subsection (3) will receive by distribution or survival from the recipient's deceased spouse if the spouse survived the recipient.

NEW SECTION. **Section 24. Time for filing of application.** Except as provided in [section 18], the department may not file an application for issuance of a writ of execution to recover upon a lien imposed under [sections 8 through 25] more than 3 years after the latest of:

(1) a sale, transfer, or exchange of any right, title, or interest of the recipient in the property;

(2) the death of the recipient; or

(3) the death of the recipient's surviving spouse.

NEW SECTION. **Section 25. Coordination of lien with other medical assistance recoveries.** The existence of a valid lien imposed under [sections 8 through 25] or the fact that a lien under [sections 8 through 25] is invalid for any reason or is unenforceable under [section 17] does not preclude the department from recovering under [section 5, 6, or 7].

NEW SECTION. **Section 26. Rulemaking authority.** The department may adopt rules to implement 53-6-143, 53-6-144, and [sections 1, 2, and 5 through 25]. The rules must comply with applicable federal law in 42 U.S.C. 1396, et seq., as may be amended, and applicable implementing regulations and policies.

NEW SECTION. **Section 27. Repealer.** Sections 53-2-601, 53-2-611, and 53-5-401, MCA, are repealed.

NEW SECTION. **Section 28. Codification instruction.** [Sections 1, 2, and 5 through 26] are intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [sections 1, 2, and 5 through 26].

NEW SECTION. **Section 29. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 30. Retroactive applicability.** [Section 2] applies retroactively, within the meaning of 1-2-109, to assets disposed of or trusts established after August 10, 1993, for purposes of determining eligibility for medical assistance on or after July 1, 1995.

NEW SECTION. **Section 31. Applicability.** (1) [Sections 3 through 7] apply to medical assistance recipients who die on or after [the effective date of those sections].

(2) [Sections 2 and 8 through 25] apply as a condition of medical assistance eligibility or continuation of medical assistance eligibility after [the effective date of those sections].

NEW SECTION. **Section 32. Effective dates.** (1) [Sections 1, 2, 27 through 31, and this section] are effective on passage and approval.

(2) [Sections 3 through 26] are effective July 1, 1995.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0236, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing restrictions on eligibility and requiring recovery of Medicaid expenditures for long-term care through liens against estates and property.

ASSUMPTIONS:
1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. This legislation implements a new proposal currently contained in the Governor's Executive Budget. All of the expenditures and revenues shown below are in addition to the Executive Budget present law base.
3. Liens will result in recoveries during the 1997 biennium.
4. The funding for recovered assets is at the federal matching rate of 30.26% general fund and 69.74% federal funds during FY96 and 31.00% general fund and 69.00% federal funds during FY97. Contracted services are matched at a reduced rate of 50.00% general fund and 50.00% federal funds during both years of the biennium.
5. Under current law, long-term care recipients can shelter or transfer substantial amounts of assets in order to become eligible for Medicaid long-term care benefits. This legislation is aimed at getting potential recipients to plan to finance their own long-term care needs, or to reimburse the state for expenditures on their behalf from the recipients estates upon their death.
6. Liens and recoveries totalling $600,000 per year will result from this legislation, based on conclusions from an independent study of Montana's long-term care program, according to the Department of Social and Rehabilitation Services (SRS). (This includes $181,560 general fund and $418,440 federal funds in FY96 and $186,000 general fund and $414,000 federal funds in FY97.)
7. The department will contract for the design, implementation and operation of a recipient asset management system which will track the assets of Medicaid long-term care recipients. This will include a media campaign during FY96 only, estimated to cost $100,000. (The cost is $50,000 general fund and $50,000 federal funds.)
8. The contractor will be reimbursed on a contingency basis of 15% of the assets and actual recoveries made. The department estimates this will be $90,000 each year of the biennium. (This is 15% of the projected $600,000 in recoveries. The funding is $45,000 general fund and $45,000 federal funds each year.)

FISCAL IMPACT:

Same as New Proposal in Executive Budget	FY96 Difference	FY97 Difference
Expenditures:		
Contracted Services Costs	190,000	90,000
Funding:		
General Fund	95,000	45,000
Federal Fund	95,000	45,000
Total	190,000	90,000

(continued)

Dave Lewis 1-31-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Mignon Waterman
MIGNON WATERMAN, PRIMARY SPONSOR DATE

	FY96 Difference	FY97 Difference
Revenues:		
General Fund Increase	181,560	186,000
Federal Fund Increase	418,440	414,000
Total	600,000	600,000
Net Impact:		
General Fund Increase	86,560	141,000
Federal Fund Increase	323,440	369,000

SB 236 INTRODUCED BY WATERMAN, ET AL.

PROVIDE FOR CONSERVATION OF MEDICAID FUNDS BY IMPOSITION OF RESTRICTIONS ON ELIGIBILITY AND BY ALLOWING OR REQUIRING RECOVERY OF MEDICAID EXPENSES FROM INDIVIDUALS AND ESTATES

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/26	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/13	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED AS AMENDED	31	17
2/18	3RD READING PASSED	31	19
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO HUMAN SERVICES & AGING		
3/01	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	65	34
3/29	3RD READING CONCURRED	63	35
	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	48	1
4/05	3RD READING AMENDMENTS CONCURRED	47	3
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 492		
	EFFECTIVE DATE: 04/14/95—SECTIONS 1 & 28-32		
	EFFECTIVE DATE: 07/01/95—SECTIONS 2-27		

SB 237 INTRODUCED BY BISHOP

PROHIBIT, EXCEPT WITHIN BOUNDARIES OF INCORPORATED CITIES AND TOWNS, DRINKING OF ALCOHOLIC BEVERAGES OR POSSESSION OR STORAGE OF OPEN ALCOHOLIC BEVERAGE CONTAINERS IN A MOTOR VEHICLE THAT IS IN MOTION ON A WAY OF THE STATE OPEN TO THE PUBLIC OR THAT IS NOT IN MOTION BUT IS WITHIN THE PORTION OF A ROADWAY ORDINARILY USED BY MOTOR VEHICLES IN MOTION

BY REQUEST OF THE DEPARTMENT OF JUSTICE

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO JUDICIARY		
1/26	FISCAL NOTE REQUESTED		
1/30	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
2/15	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED AS AMENDED	29	21
2/20	3RD READING PASSED	27	23
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/14	HEARING		
	DIED IN COMMITTEE		

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By **ACTING CHAIRMAN ARNIE MOHL**, on February 13, 1995, at 12:05

ROLL CALL

Members Present:
Sen. James H. "Jim" Burnett, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Arnie A. Mohl (R)
Sen. Mike Sprague (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Terry Klampe (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Karolyn Simpson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 158, SB 236, SB 248, SB 339
Executive Action: None

{Tape: 1; Side: 1}

HEARING ON SB 158

Opening Statement by Sponsor:

SENATOR MIGNON WATERMAN, SD 26, Helena, said SB 158 deals with long-term care. She said, they have been working in the area of long-term care for a couple of years because the cost of long-term care, in Montana, is one of the fastest growing and most expensive sections of the Medicaid budget. In the last Legislative session, language was added to HB 2 asking the Department to consider community based long-term care services that are appropriate and cost effective. The result of that language is SB 158.

Charles Rehbein, Coordinator on Aging, Department of Family Services, said he supports SB 158. The aging population in Montana is growing and, in the past 5 years, the senior population, 85 and older group, has doubled. It went from 10,800 to its present over 20,000. The need for long-term care planning is essential.

Mike Bellows, representing Montana Coalition on Insurance Reform, said they support SB 158. There is a need for services to be provided at a reasonable cost and provide services to those who don't necessarily need skilled nursing care in their own home or personal care home.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

SENATOR WATERMAN said SB 158 has truly been a collaborative effort of numerous state department and senior citizens groups. Referring to an article, **(EXHIBIT 4)** she said it sums up the problems that have been created as the Medicaid system evolved over the years. Several states are looking at a fundamental systemic change in how services are provided, and that's what SB 158 intends to do.

HEARING ON SB 236

Opening Statement by Sponsor:

SENATOR MIGNON WATERMAN, SD 26, Helena, said SB 236 is a more complex bill than SB 158. Although SB 236 bill addresses the same subject, it is a very different bill than she carried during the special Session in 1993. It was a controversial bill and was a more aggressive bill, by which the state would have seen more financial benefits. She said SB 236 will bring Montana law in compliance with new federal standards, but more importantly, will insure, even in difficult economic times, the Medicaid program in Montana for long-term care will be preserved for the truly needy. We need to keep in mind as long-term care and the Medicaid program, is Medicaid is a welfare program for needy.

Congress enacted Medicaid in 1965 to insure access to health care for poor women and children. It quickly became the first major third-party financing source for long-term care in this nation. Over several years, estate planners devised ways to help people divest in sheltered assets so virtually anyone could qualify for Medicaid long-term service coverage. As an example, people could divest themselves of all their income and become Medicaid eligible. Medicaid was not designed for people with large assets to be sheltered to pass them on to their children.

Our elderly population is projected to increase by over 25% in the next 4-5 years, the fastest growing segment of that population is individuals who are over 85 years of age, and 1/3 of those individuals are now in institutional care. SB 236 restricts the sheltering and divesture of assets to become eligible for benefits under Medicaid, allows the state, if there is no surviving spouse living in the home, to place a lien on the real property of people who have assets to pay for their care, but instead have chosen to use Medicaid benefits. It expands the state's ability to recover from those estates, once the Medicaid recipient is deceased, provides for exemptions, for hardship, agreements and appeals procedure.

Because Medicaid is a very expensive program, only the benefit needs of low-income Montanans can be continued to be addressed if we come up with a program that allows those of us who can afford to pay for our own care opportunities to do that. Medicaid long-term care benefits account for approximately 1/3 of our total Medicaid budget. About 4% of seniors have purchased long-term care insurance, and 25% of those individuals over 65 will be in nursing home care. Unless something is done to curtail the shifting of assets in the Medicaid nursing home program, the program that was meant for the poor will fail to exist. It is essential that Medicaid long-term care growth be restricted and SB 236 will do that.

<u>Proponents' Testimony</u>:

Peter Blouke, Director, Department of Social and Rehabilitation Services, said SB 236 is a vital piece of legislation to keep Medicaid for the needy. **EXHIBIT 5.**

Ed Caplis, representing the Montana Senior Citizens Association, said they strongly support SB 236. They originally opposed the bill in the special session, but feel SB 236 is about fairness and so they support it.

Kate Cholewa, Human Services Foundation, representing aging services, people with disabilities, low income housing, job training programs, and concerned individuals. She said they support SB 236 because it puts the resources to those who need them most.

Rose Hughes, Executive Director, Montana Health Care Association, representing Nursing Homes throughout Montana, said they have seen first hand that the Medicaid program, which is supposed to be a program to pay for services for the poor, ends up, in the case of nursing homes, sometimes paying for services through Medicaid for individuals who have divested assets and could have provided for their own care, were it not for the current loopholes in the law. If the money is going to be available to pay for the individuals who are poor and need nursing home care, these loopholes need to be closed, so Medicaid will be used for what it was intended, the poor.

John Cobb, Rep, HD 50, spoke in support of SB 236. He said nobody likes to crack down on senior citizens, but the money will be used to provide alternative services. The senior citizen budget for Medicaid keeps growing with less money available for children and young mothers. This bill will help keep people out of nursing homes and provide alternative services which will lower the growth rates on those higher costs services which will free money for children and mothers in the communities.

Charles Briggs, Director, Rocky Mountain Agency on Aging in Helena, said he and the Association support SB 236. He said this bill does bring Montana into compliance with federal law and that has been an issue since fall 1993. There was a lot of concern with the earlier version of this bill in the Special Session in the fall of 1993, particularly focused on the needs of the surviving spouse. Those issues now have been satisfactorily addressed. We hear so much about people taking advantage of the welfare system and how people shelter their assets so they can take advantage of the public resource.

Evelyn Havskjold, representing Hill County Aging Services, read her written testimony in support of SB 236. **EXHIBIT 6.**

Michael Griffith, representing AARP, spoke briefly from his written testimony in support of SB 236. **EXHIBIT 7.**

Hank Hudson, Director, Department of Family Services, spoke in support of SB 236. He said, because the Department of Family Services includes the Adult Protective Service Program, Ombudsman Program, Aging Services Network, and Administration Program, they are vitally interested in SB 236. They recognize this bill is an emotional and difficult issue, but they support the resolution and balance in the bill. His first job in state government was advising people about the rules, eligibility for various services, and whether there is something between going on welfare or losing everything and spending everything saved because of nursing home costs. People said they were willing to pay their fair share, but didn't want to spend everything to be in a nursing home. He said SB 236 represents a balance and people want to pay their fair share. Middle class individuals don't want to be a part of public assistance system, but they want to preserve some safety net for their spouse.

<u>Opponents' Testimony</u>:

Bob Bachini, Havre, spoke in opposition to SB 236. This bill is in the same form as was the bill presented in the Special Session and there are a lot of questions still left unanswered. He said he would not argue with the intent of the bill, preventing the rich from sheltering their assets so they wouldn't have to pay anything for their nursing home care, but several attorneys who he contacted said this bill will not prevent the rich from sheltering their assets. This bill narrows the scope down to a

certain group of people with few assets, other than a home and a small savings account.

Questions that should be asked are: what effect will this bill have on a Living Trust, on the Homestead Act, and on wills. He said, after talking with several attorneys, SB 236 makes these items null and void, and doesn't think it's the intent to take away the last possessions of senior citizens. This bill allows the Department to place a lien on both real and personal property, which means they can take whatever they wish. The validity of this was asked of the Department during the Special Session, and the answer was yes, there wasn't anything that is exempt and they could take anything.

He has other problems with this bill. It grants the Department full rule-making authority, which scares him. As a former Legislator, he said when full rule-making authority is granted to any Department, they are given such broad authority that the bill can be interpreted any way they please. As long as there is legislation like this on the books, there is no incentive for nursing homes to control costs for seniors, because they know the state will place a lien on an individual's property. He said many people in AARP and Senior Citizens groups are still opposed to this bill.

SB 236 is really an unfair bill. He said he doesn't think it's intended to prevent having a Living Trust, a will, or to affect the Homestead Act. It's hard enough getting a start in this world, and if our grandparents were able to save a few dollars, whether equity in a home or other things, and pass these on to their children or grandchildren so they can get a head start, this bill will take it all away. He had a question about the $100,000 exemption in this bill, whether it's really that amount.

He read portions of a newspaper article titled "Doing Hard Times," by Bob Anez, AP writer. Three-fourths of the prisoners at Deer Lodge are working and receiving an hourly wage ranging from .60 to $1.00. He said, people are in prison by their own choice by breaking the law, and then there are people in nursing homes, not by their choice because of age or an illness, on whose property the state will place a lien, then asked why isn't a lien placed on prisoners and make them pay back to the state what they owe, because they are fed, clothed, and receive health care at taxpayer expense. He said SB 236 is very unfair, and when the government brings a bill to address this, maybe he'll support a bill that addresses the seniors. While people are confined in a nursing home, they are still paying taxes, property and income tax. He said this picks on working class people.

Joe Brand, Montana State Legislative Chairman for Veterans of Foreign Wars, said they oppose SB 236. He read a statement about an individual confined to a nursing home. If this person were to go on Medicaid, their home had to be sold at market value plus other assets, except funeral expenses which was put into another account. The undertaker will get their money, the nursing home will receive the remainder plus the Social Security this person receives. When the estate is gone, Medicaid will pick up the

difference that Social Security does not pay, less $40 for personal needs. He said health care costs have increased 10-fold and the general public has no choice, but to pay. About 10 years ago, people who were put in nursing homes could leave their estates to whomever they chose, and 1 year before they were admitted, they were allowed to sign-over their estates and go on Medicaid. Three years ago, it was changed from 1-year to 3 years, and now it's zero. Now, Living Trust, houses, farms, stocks, bonds, and any other property can be taken. No one has done anything about health care costs. It seems that people have children, in or out of wedlock, mothers and children can go on welfare and the boyfriend or husband pays little or nothing to pay for their needs, and who pays? The taxpayer. A person can commit a crime, go to prison and receive all the health care, education, food, lodging, and court costs, including many appeals, all for nothing. And who pays? The taxpayer. But a person who works their entire life, pays their taxes, pays Social Security, pays for medical care, pays education costs for their children, and pays into the system all their life. Then when the time comes to be placed in a nursing home, then they are asked to place the rest of their assets into the system again. It's the same people who have been asked to pay time and time again. If this continues, the middle class will no longer exist. There will only be the very rich, who won't pay, and the poor, who can't. We're supposed to be a compassionate nation, but when it comes to the middle class, that's all forgotten.

Nick Baumberger said he sees a lot of gray areas in SB 236. One of the concerns in Sections 6 and 7, Mortuary. Under current law, $5,000-$7,000 is allowed to be put aside for burial. If that amount is not sufficient, the family picks up the difference. Under present law, if there is money left over, it is returned to the family. Setting up a trust is not feasible for the many people in nursing homes who don't have a lot property or money. Protecting their assets is not feasible. Under this new law, if everything has to be returned, they are required to die at zero. When people work for 45-50 years and pay taxes, they've helped pay for some of their own expenses in the system.

Questions From Committee Members and Responses:

SENATOR BENEDICT asked if there would be a problem with the Living Trust, Homestead Act, or wills in relation to SB 236.

Greg Gould, Attorney, Department SRS, said this bill isn't anything new, parts of the bill are new, but the estate recovery program has been in effect for many years in Montana. SB 236 makes some changes, but under current law, if Medicaid has a claim against the estate, *{Tape: 1; Side: 2}* like other creditors against the estate, those claims are paid prior to payment to those named in the will. This is not a new concept. He doesn't think this bill makes any change, in respect to the effect of the will in one of these circumstances. In regard to a Living Trust, there's a portion of the bill, which is federal law and the

provision has been there for sometime, that says, if you give away assets without being compensated for those assets within a certain period of time prior to applying for Medicaid, then a person is ineligible for a certain period of time. The changes made in SB 236, is that it follows new federal law, extending the look-back period, before applying for Medicaid. It will be changed from 30 months to 36 months, or if it's to a trust, it's 60 months. Even though there has been the estate recovery program, people could put property into various types of ownership that would pass the property outside the probate estate. A Living Trust is one of the ways this can be done. If Medicaid had a claim against the estate, there was no property in the estate to recover. He said, he didn't think a Living Trust would be affected by SB 236. The Homestead exemption could come up in some of the situations involving real property. A new provision, property can be transferred before or after a person becomes eligible. Under Medicaid law, when a person goes into a nursing home, if they own a home, the value of that home will not be counted against them, for purposes of eligibility. The law provides that home be exempt as long as they say they intend to come back home. It doesn't matter whether there's any possibility of that happening. That home could be transferred away and Medicaid would not be paid back. With SB 236, if that person is permanently institutionalized and there's no possibility of their going back home, and at that time no spouse is living in the home, don't have any children under the age of 21, and don't have any blind or disabled children, only then, could a lien be placed on the home and it would preserve that property until after that person died. He didn't think the Homestead Act would even come into play, because it protects, up to $40,000 value, from a creditor taking the home. SRS would only be able to recover under the lien if the person died or was voluntarily selling the home.

SENATOR BENEDICT asked about real and personal property, and the effect SB 236 would have.

Greg Gould said, under current law, any assets that are part of the probate estate are subject to creditors claims, including family heirlooms. This bill makes no change in that, but there are exemptions in the probate code.

SENATOR BENEDICT interrupted **Greg Gould** to ask, if this bill is putting Medicaid into the current law formula, and, if there were no creditors other than Medicaid, without SB 236, Medicaid would not be able to go after family heirlooms.

Greg Gould said, under present law, Medicaid has a right to file a claim against the decedents estate to recover Medicaid benefits paid on behalf of that person after they reach 65 years of age. This applies to all assets in the estate, with no distinction made for personal property. There are some exemptions in the probate code that give certain values up to $10,000 to $20,000 for individual's children, but doesn't go so far as to protect for every relative.

SENATOR ECK asked about gifts from an estate during the 36 or 60 months, prior to entering a nursing home, and if all other assets, including the home, stocks, bonds, etc. are given away, how would this situation be handled.

Greg Gould said, at the time the person applies, they are asked about their resources and income. If they reported those items at that time were over a certain amount, the individual would not be eligible.

SENATOR ECK ask what would happen if the individual had given all assets away the year before.

Greg Gould said, if these items were given away during the look-back period, which is not 36 months for this type of give away, under federal law, the Department would be required to report the value of those assets given away during an appropriate period of eligibility.

SENATOR SPRAGUE asked about the application to inter-state and intra-state, and if a person's assets were out-of state and they came into the state to be in a nursing home. The heirs live in Montana, which makes it applicable to look-back, but the person's assets are out-of state.

Greg Gould said, if the person from out-of state who is going to go apply for Montana Medicaid, they would be asked about their resources and income. Even if their assets were located elsewhere, it would still be considered.

SENATOR SPRAGUE asked if the Department would be able to recover assets from another state.

Greg Gould said this gets into a question of recovering the assets later on. If the real property is not located in Montana, he doesn't think a lien could be placed on this property in another state, under SB 236.

SENATOR KLAMPE asked whether assets transferred to a Living Trust would be unavailable for recovery.

Greg Gould said, under the bill, the date the transfer of assets to the Trust was made and whether it fell within the transfer provision. If it's found the transfer was made within the 60 months period, there would be a period of time of ineligibility. If a period of ineligibility was imposed because of that transfer to that trust, the bill specifically states, they cannot go after the assets in that trust.

SENATOR ESTRADA asked if a will is made, 25 years ago, leaving 75% of the estate to one child, another gets 5%, then goes into a nursing home and uses up about 50% of her assets before passing away, how are the assets distributed to her heirs, and who would do that.

Greg Gould said SRS doesn't handle the distribution of the estate, but SRS would file a claim against the estate, as would other creditors. Costs, such as personal representative, attorney for the estate, costs of administration, then creditors claims would come out of the estate, then the remainder would go to the heirs.

SENATOR ESTRADA asked, if this bill passes and SRS files a claim, would the SRS claim come off the top.

Greg Gould said, under current law, SRS would file a claim, and it would be ahead of what goes to the heirs.

SENATOR SPRAGUE asked if this is modeled after other states, and if there is provision for reciprocity between states.

Greg Gould said there is no provision for reciprocity.

SENATOR ECK asked about a person being in a nursing home in another state, and is getting Medicaid in that state, then wants to move to a nursing home in Montana, whether Montana picks up the Medicaid or whether the other state continues.

Greg Gould said it's a matter of residency and it's possible to come into Montana and become Montana Medicaid eligible.

SENATOR MOHL asked what was in Section 27 that was repealed.

Greg Gould said Sections 5 and 2 replace existing sections of law. 53-2-601 in current law is being replaced by Section 2, and Section 5 replaces 53-2-611. 53-2-401 is recovery of old-age assistance and hasn't been done for years.

<u>Closing by Sponsor</u>:

SENATOR WATERMAN said it's easier to pass policy that mandates the state to do something, but when it begins to affect each of us and what we do, it becomes more difficult. This is a policy decision and is difficult because it's an area that we don't think about, what's going to happen if we end up in a nursing home or how we will take care of long-term care. If SB 236 passes, it will force us to plan for our own long-term care and if we want to pass our estate to our kids, then our kids will have to take care of us or buy long-term care insurance. There isn't enough money available for the state to take care of everyone's long-term care. It's a question of who are we protecting. Are we protecting those who have assets and could plan for the future, at the expense of the low-income elderly, or will it force everyone to plan for the future as well as possible.

Some parts of SB 236 need to be implemented to meet federal requirements to retain federal Medicaid funding of more than $3 million per year for long-term care. Montana pays $85-90 million per year. She advocates expanding community-based services, which

will cost more money, but serve more people appropriately. Presently there are about 400 people in community-based services funded with $1 million federal money plus matching state money. She said it's important to do some public education about the alternatives to long-term care, which is part of SB 236. If this bill is not implemented, additional funding for community-based services must be found or community-based services will not be expanded.

HEARING ON SB 248

Opening Statement by Sponsor:

SENATOR BILL CRISMORE, SD 41, Lincoln County, said SB 248 eliminates the state's licensure program for cesspool, septic tank, and privy cleaners by the Department of Health and Environmental Science. It transfers the regulation and licensing authority to local governments because it primarily uses local government to review, inspect, and improve waste disposal sites and investigate waste disposal complaints. Currently local governments receive $20.00 from each $25.00 license issued by the state. Under this proposal, local government are authorized to increase license fees to cover their costs. There are continuing public health reasons for regulating where and how waste from septic tanks, cesspools, and privies is disposed, and control the method and location of disposal sites. The majority of the review concerning how and where these wastes are disposed is done by local public health agency staff. SB 248 would transfer this public health function to the local government level and allow them to recover their costs.

Currently, there are 130 licensed septic tank pumpers in the state, with more than half of them operating in counties other than where their business is located. This bill seeks to make public health regulation of septic waste more effective by removing the state license requirement and provide local health agencies the authority and financial ability to review and approve waste disposal methods and sites.

Proponents' Testimony:

Dale Taliaferro, Administrator of Health Services, Department of Health and Environmental Sciences, spoke from his written testimony in support of SB 248. **EXHIBIT 8.**

Bob Robinson, Director, Department of Health and Environmental Sciences, said this bill is a product of directives given to them by the 1993 and 1995 Legislatures. The Appropriations Committee asked them to identify those portions of the Department that are really obsolete or of little consequence. This is a license issued that really doesn't have any substance behind it. There are no standards to be met, at the state level, by the applicant before being issued a license - it's just paper processing at state government level. They receive $25.00, stamp out a license, send the license to the applicant, and send $20.00 to the county. There are standards to be met at the local level. For those who

SENATE HEALTH & WELFARE
EXHIBIT NO. 5
DATE 2/13/95
BILL NO. SB 236

TESTIMONY OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES BEFORE THE SENATE PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

RE: SB 236 - An Act Relating to Medicaid Estate Recovery and Liens.

SB 236 will implement changes in federal law which prevent individuals from becoming eligible for Medicaid long term care benefits by giving away or sheltering substantial assets. The bill would implement changes in federal law which require expanded recovery of medicaid expenditures from estates of deceased recipients and allow recovery of Medicaid expenditures from the recipient's property passing outside the probate estate. The bill would require SRS to place a lien upon real property owned by certain medicaid recipients to preserve the property for later recovery of Medicaid expenditures. This bill will not cause benefits to be denied to any citizen who truly does not have the resources to pay for long term care.

Previous federal law required a period of medicaid eligibility for long term care services when a person disposed of resources for less than fair market value during a certain time period. However, the federal law left several gaping loopholes. These loopholes have been exploited by some individuals to intentionally impoverish themselves so that medicaid pays for their long term care. The law also failed to adequately address multiple transfers and other issues. The result was that the penalties for uncompensated transfers were not significant enough to accomplish their purpose.

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) amended the transfer of assets law to close these loopholes, to increase the "look back" period from 30 months under previous law to 36 months (or 60 months if the transfer is to a trust) under the new law and to address certain inadequacies in the penalty provisions of the law.

The proposed bill would require SRS to adopt rules which deny eligibility when a person has disposed of assets for less than fair market value. SRS has authority under existing state law to adopt rules providing for treatment of trusts as required by the new federal law. The bill allows SRS flexibility to adopt and amend its rules to respond to new eligibility planning strategies and to implement future federal changes without the need to await further state legislative action. The bill requires SRS to establish and "undue hardship" exception process and criteria as required by federal law.

SRS currently operates a program to recover medicaid expenditures from estates of deceased recipients. OBRA '93 expands the medicaid expenditures which states must recover from estates. OBRA '93 also allows the state the option of recovering property of the deceased recipient which upon death passes outside the probate estate (for example, property held in joint tenancy with right of

survivorship). This closes a significant loophole in prior law which allowed persons to avoid estate recovery by transferring assets into forms of ownership which bypass the probate estate.

The proposed bill would also implement federal law which allows the state to impose a lien upon the recipient's interest in real property for later recovery through the estate, or for recovery upon sale or transfer.

Montana Medicaid spent over $100 million on long term care services in FY 94. This represents about one third of the entire budget. Approximately 62 percent of nursing home residents are eligible for Medicaid to pay their nursing home bill. This has placed a strain on state finances and will only get worse as more of our population becomes eligible for long term care services. This bill addresses the need for public private financing of long term care and implements a solution for Montana.

Montana can save almost one million dollars or more in the up coming biennium and substantially more in future years by implementing and enforcing restrictions on asset transfers, imposing liens on sheltered property, and recovering benefits paid from recipients' estates. These savings derive from a combination of hard dollar recoveries and cost avoidance as more seniors choose private alternatives to long term care financing. The provisions of the bill are designed to target public welfare resources to those who need them most while providing a stronger incentive for seniors and their heirs to plan ahead for their long term care needs by purchasing long term care insurance or other private financing and avoid reliance on public funds.

You may recall that during the December, 1993 special session, similar legislation was introduced. (SB 39) The proposed bill passed the Senate and failed in the House. After the special session, the department met with representatives of over a dozen groups which had an interest in the legislation. The department has made many changes in this bill to accommodate the concerns these and other groups raised. These changes include referencing federal law when appropriate, eliminating references to establishment of trusts, providing clear protection for spouses and other dependent family members, clarifying the establishment of undue hardship provisions, as well as making the legislation less cumbersome.

At a time when the Medicaid program faces potential budget reductions in other areas which impact the access and payment of care for low-income recipients, this bill provides savings without impacting anyone except those who have the means to pay for their own care and their heirs. When many poor women and children below the poverty limit do not now qualify for Medicaid, it only makes sense that people an their heirs who can afford to pay for their own care no longer use limited public assistance dollars.

Passage of this legislation is critically important to our efforts

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to reform long term care in Montana. Savings resulting from this bill will help finance development of home and community services as alternatives to more costly institutional care.

On behalf of the Department of Social and Rehabilitation Services I urge you to pass HB 236. Thank you for the opportunity to provide these comments.

Submitted by:

Peter Blouke, Ph.D
Department of Social
and Rehabilitation Services

SENATE HEALTH & WELFARE
EXHIBIT NO. 6
DATE 2/13/95
BILL NO SB 236

CHAIRMAN AND MEMBERS OF THE COMMITTEE: FOR THE RECORD MY NAME IS EVELYN HAVSKJOLD. I REPRESENT HILL COUNTY AGING SERVICES. I AM TESTIFYING AS A PROPONENT FOR A LAW WHICH WOULD COVER THE USE AND MISUSE OF MEDICAID AND ALSO THE ESTATE RECOVERY FOR MEDICAID.

IN MY OPINION, SB236 ASKS MORE QUESTIONS THAN IT GIVES ANSWERS. I HAVE LISTED BELOW SOME TO THE POINTS WITHIN THIS BILL I FEEL NEED TO BE CLARIFIED.

STATEMENT OF INTENT:

I HAVE A CONCERN WHEN RULEMAKING AUTHORITY, TO IMPLEMENT ACTIONS WHICH WILL RESULT IS SUCH SERIOUS CONSEQUENCES, IS LEFT TO ANY ONE SINGLE STATE AGENCY.

IT IS MY OPINION THAT THE LEGISLATURE HAS THE RESPONSIBILITY TO MONTANA CITIZENS TO HAVE THE RULES SPELLED OUT BEFORE PASSING A LAW OF THIS MAGNITUDE.

SECTION 2 (NEW)

UNDUE HARDSHIP EXCEPTION IS NOT DEFINED, NEITHER IN THIS SECTION OR ANYWHERE THROUGHOUT THE PROPOSED BILL.

SECTION 3 SECTION 53-6-143 MCA

PART 4. "IF THE SRS ALREADY HAS A LEIN ON PROPERTY IT DOES NOT PRECLUDE THEM FROM PURSUING RECOVERY UNDER ANOTHER SECTION AGAINST OTHER ASSETS OF THE RECIPIENT OR ASSETS OF ANOTHER PERSON PROVIDED IN 53-6-144, (SECTIONS 1, 2, AND 5 THROUGH 261, AND THIS SECTION.)"

WHAT OTHER ASSETS ARE BEING TALKED ABOUT OTHER THAN THOSE ASSETS WHICH HAVE ALREADY BEEN DOCUMENTED TO RECEIVE MEDICAID ELIGIBILITY?

SECTION 4 SECTION 53-6-144 MCA

"THE ONLY RELATIVES THAT MAY BE HELD RESPONSIBLE FOR PAYMENT OF MEDICAL ASSISTANCE UNDER THE PROGRAM ARE THE HUSBAND OR WIFE OF THE INDIVIDUAL, THE PARENTS OF CHILDREN UNDER 18 YEARS OF AGE, AND PARENTS OF BLIND OR DISABLED PERSONS OVER 18 YEARS OF AGE."

THE KEY WORDS ARE "MAY BE HELD RESPONSIBLE." LET ME GIVE YOU 2 EXAMPLES. I PERSONALLY HAVE A 11 YEAR OLD GRANDSON, JAKE, WHO HAS A CANCEROUS BRAIN TUMOR, WHO WOULD BE INVOLVED IN THIS AREA. JAKE HAS BEEN GOING THROUGH SURGERIES, RADIATION, CHEMOTHERAPY, WHEEL CHAIRS, ETC. FOR THE PAST 9 YEARS. HIS PARENTS HAVE HAD EXCELLENT HOSPITAL INSURANCE DURING THIS WHOLE TIME. THEY HAVE SPENT MANY OTHER DOLLARS, AS HAVE MY HUSBAND AND I, TO TRY TO RESOLVE THESE PROBLEMS. THE HIGH COST OF MEDICAL CARE FORCED US TO SEEK MEDICAL ASSISTANCE THROUGH MEDICAID. THERE ARE 2 YOUNGER CHILDREN IN THE FAMILY. IF SOMETHING HAPPENS TO JAKE, WHAT HAPPENS TO THE REST OF THE FAMILY? IT NEEDS TO BE DEFINED.

THE OTHER EXAMPLE IS AN OLDER COUPLE WHO HAVE A DISABLED YOUNG ADULT, UNMARRIED, AND OVER THE AGE OF 18. SHE LIVES IN HER OWN APARTMENT, SEPARATE FROM THE FAMILY HOME, AND HER PARENTS PROVIDE CARE AND SUPPORT FOR HER. SHE IS ON MEDICAID BECAUSE OF THE HIGH COST OF CARE. DOES THIS MEAN, UPON HER DEATH BEFORE HER PARENTS, THAT THE PARENTS ARE RESPONSIBLE FOR HER MEDICAID COSTS? WOULD A LEIN BE PUT ON THE PARENTS HOME WHILE THEY ARE BOTH STILL ALIVE AND IN THIS HOME?

THESE ARE REAL CASES I HAVE LISTED. THE REAL SOLUTIONS TO THESE, AND OTHER CASES, NEED TO BE DEFINED BEFORE WE HAVE A LAW WITH NO GUIDELINES.

SECTION 5 (NEW)

(7)(C) "DENIAL DOES NOT GRANT A RIGHT TO A CONTESTED CASE HEARING OR A RIGHT TO JUDICIAL REVIEW UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT OR THE DEPARMENT'S RULES."

DOES THIS MEAN THE INDIVIDUAL HAS NO LEGAL RECOURSE? WHAT ARE THESE RULES?

(9) "ALL MONEY RECOVERED UNDER THIS SECTION FROM ANY SOURCE MUST BE DISTRIBUTED TO THE STATE GENERAL FUND AND TO THE UNITED STATES AS REQUIRED BY APPLICABLE STATE AND FEDERAL LAWS AND REGULATIONS."

I AM CONCERNED THAT THE FEDERAL GOVERMENT IS GOING TO GET OVER 71 CENTS OF EACH DOLLAR RECOVERED. OF THE REMAINING 31 CENTS SRS WILL TAKE A SHARE FOR ADMINISTRATION AND THE PRIVATE CONTRACTOR WILL TAKE 10 CENTS PLUS CONTINGENCY. IF THERE ARE ANY FUNDS REMAINING, I RECOMMEND 50% SHOULD GO TO MEDICAID WAIVER AND 50% TO DFS OFFICE ON AGING FOR LONG TERM CARE PLANNING AND CASE MANAGEMENT.

ARE WE PREYING UPON MONTANA CITIZENS, WHO HAVE BEEN UNFORTUNATE TO HAVE CATASTROPHODIC ILLNESS EFFECT THEIR FAMILY, FOR THE FEDERAL GOVERNMENT REIMBURSEMENT?

SECTION 19 (NEW)

(2)(B) SPOUSES LIMITED EXEMPTION FROM LEIN. I APPRECIATED THE IMPLEMENTATION OF EXEMPTIONS THAT PROTECT THE COMMUNITY SPOUSE FOR $100,000, BUT ARE WE SURE WITH ALL THE STIPULATIONS IN THIS BILL THAT THE $100,000 IS AN ACTUAL NUMBER?

SECTION 27 (NEW) REPEALER

SECTIONS 53-2-601, 53-2-611, 53-5-401, MCA, ARE REPEALED. WHAT WERE THEY AND WHY WERE THEY REPEALED?

SECTION 30 (NEW) RETROACTIVE APPLICABILITY

"APPLIES RETOACTIVELY TO ASSETS DISPOSED OF OR TRUSTS ESTABLISHED AFTER AUGUST 10, 1993, FOR PURPOSES OF DETERMINING ELIGIBILITY FOR MEDICAL ASSISTANCE ON OR AFTER JULY 1, 1995."

THIS BILL IS SO IN DEPTH THAT IMPLEMENTATION AND INFORMATION TO THE CITIZENS OF MONTANA IS NOT GOING TO BE INSTANTANEOUS. FOR EXAMPLE, ALL INDIVIDUALS PRESENTLY ON SERVICES WILL NEED TO BE CONTACTED, INFORMED OF THE NEW LEIN LAW, AND ASKED IF THEY WISH TO CONTINUE SERVICES. WHO WILL DO THIS CONTACTING AND WILL IT BE FACE TO FACE? MANY OF THESE PERSONS ARE FRAIL ELDERLY. ESTATE PLANNERS COULD BE GUILTY OF GIVING THEIR CLIENTS IMPROPER ADVICE BECAUSE OF THE RULES AT THE TIME AND BECAUSE THE CURRENT RULES HAD BEEN CHANGED. LEGALLY SPEAKING, IT WOULD PROBABLY BE ADVISABLE TO SET THE ELIGIBILITY CRITERIA AS OF A FUTURE DATE AND FROM THAT DATE ON.

IN CONCLUSION, I BELIEVE MOST MONTANA CITIZENS WANT TO PREVENT ABUSE OF THE MEDICAID SYSTEM BY "RICH" PERSONS BY CUTTING OFF THEIR ABILITY TO "GAME THE SYSTEM." BUT WE MUST BE CAREFUL WHEN IMPLEMENTING THIS TYPE OF LAW, THAT WE DO NOT PENALIZE MONTANA AND CITIZENS WHO HAVE BEEN HIT BY CATASTROPHIC ILLNESSES.

I HAVE DISCOVERED, IN THE PAST 22 YEARS OF WORKING WITH THE ELDERLY, THAT THEIR FIRST CHOICE TO RECEIVE DIRECT SERVICES IS IN THEIR HOME. IN ADDITION, THIS IS THE MOST EFFECTIVE AND LEAST EXPENSIVE METHOD OF DEALING WITH THEIR PROBLEMS. I HAVE A CONCERN THAT THE FRAIL ELDERLY NEEDING SERVICES WILL DISCONTINUE THESE SERVICES RATHER THAN HAVE A LEIN PUT ON THEIR HOME.

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THE IN-HOME SERVICES THEY WOULD DISCONTINUE WOULD RESULT IN A MORE COSTLY INSTITUTIONAL SETTING. I THEREFORE RECOMMEND THAT A WAIVER FOR HOME AND COMMUNITY BASED SERVICES BE EXPLORED.

THANK YOU FOR YOUR TIME AND CONSIDERATION OF THIS TESTIMONY.

SENATE HEALTH & WELFARE
EXHIBIT NO. 7
DATE 2/13/95
BILL NO. SB 236

TESTIMONY BEFORE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE
13 February, 1995
Montana American Association of Retired Persons Legislative Committee

Mr. Chairman:

For the record my name is Michael Griffith. I am representing the American Association of Retired Persons. Mr. Chairman, AARP is known for its supplemental medicare insurance and other national benefits.

However, I represent the 113,000 AARP members in Montana, and the hundreds of community service volunteers who are active in this state teaching drivers training, helping with income tax returns, counseling pre-retirees and helping widowed persons, among other programs. Not one member in Montana sells AARP insurance or has a paid position. We are all volunteers.

The Montana AARP state legislative committee fought SB 39 in the last Special session. Since then, we have had several working sessions with Senator Waterman and SRS concerning what we perceived as problems with that bill. We want to take this opportunity to thank Senator Waterman and the department for their patience and willingness to take our concerns into account.

Almost every concern we had has been taken into account. As a result, the Montana AARP legislative committee voted to support this bill. #236

We still have uneasy feelings about the privatization of the recovery program. 1/

We also are uneasy about the rule making powers given the department in this very sensitive area. 2/

Finally, we hope that the success of the recovery program is reflected in additional funds being appropriated for assisted living programs designed to keep elderly out of expensive nursing homes. 3/

For the record, I am submitting a statement of the actions taken in this bill to address our major concerns.

We concur in this bill. #236

Thank you.

SENATE HEALTH & WELFARE
EXHIBIT NO.
DATE
BILL NO.

1/ Alternatives:
a. Put in contract what can be done
b. Put in rules " " " "
c. SRS do it.
d. Have a citizens review board.

2/ Outside audit
Outside board

3/ We realize that earmarking is frowned on.

COMPARISON OF PROPOSED LIEN LAW WITH SB 39 OF SPECIAL 1994 LEGISLATURE

The law allows for recovery of the recipient and spouse's assets under certain instances.

1. Liens used prior to death only.

Allows use of liens prior to death only (a) to satisfy a court judgement, (b) to recover from third parties (such as insurance carriers, providers, etc.), and (c) in cases of institutionalized persons, including those in nursing homes longer than 6 months.

The SLC had concerns about liens on personal property of the surviving spouse. Liens are authorized only against the real property of living institutionalized recipients.

The SLC questioned the extent that the surviving spouse was liable for the debts of the deceased recipient. Clearly the surviving spouse is liable according to current law.

The SLC had concerns about impoverishment of surviving spouses, and recoveries from a large number of relatively poor individuals. A spousal exemption of up to $100,000 from the lien on real property is possible, depending upon the value of the property and the personal assets of the surviving spouse. Since eligibility includes consideration of assets (exempting the home) and requires a spend-down, the utility of this exemption may be moot.

In addition, the department can't collect on a lien so long as a surviving spouse or minor or disabled children are alive. This has been expanded beyond the original "so long as a surviving spouse lives in the home."

Furthermore, the amount, type and method of medicaid re-payment may be negotiated with the department.

The SLC had raised questions concerning dismissal from a nursing home. The lien is dissolved if and when a recipient is discharged from the facility and returns home.

The SLC wanted notices and hearings. State must give notice of intent to impose a lien and provide opportunity for a hearing.

The SLC wanted notification. Execution of the lien must be acknowledged.

The SLC raised the question of the order of the lien. The lien is prior to any earlier or subsequent recorded or unrecorded claim.

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SB 236

2. Claims against estates used after death.

AARP policy is to limit recovery only to what is included in probate. The act expands recoverable assets to those outside probate as authorized but not mandated by Federal law.

The act allows recovery after death by filing a claim. Recoverable assets include everything owned at the time of death, including revocable trusts, life-time estates, bank accounts, etc. The act also authorizes recovery from survivors and divisees through court action.

The SLC wanted the timing of claims clarified. Claims are filed during probate creditor notice period.

The SLC raised questions concerning impoverishment. Department may give hardship waivers, and must notify surviving spouse of right to a waiver.

The SLC wanted a limit on execution time. Three-year time span to collect on a claim.

The SLC was concerned that the department would build up a claims bureaucracy using recovered funds. Claims recovered go to the general fund, not back to the department.

3. Personal funds of a deceased recipient held by a nursing home are confiscated by the department.

4. Excess burial funds of a deceased recipient are confiscated by the department.

5. The Act authorizes application of the same rules to public assistance recovery, and repeals Public Assistance Recovery, Recovery from Estates, and Old Age Assistance Recovery laws.

-----END-----

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By **CHAIRMAN JIM BURNETT**, on February 15, 1995, at 12:02 PM

ROLL CALL

Members Present:
Sen. James H. "Jim" Burnett, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Arnie A. Mohl (R)
Sen. Mike Sprague (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Terry Klampe (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Karolyn Simpson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 240, SB 223, SB 310
Executive Action:	SB 240, SB 310, SB 223, SB 248, SB 158, SB 236, SB 339

{Tape: 1; Side: 1}

HEARING ON SB 240

Opening Statement by Sponsor:

SENATOR FRED VAN VALKENBURG, SD 32, Missoula, said SB 240 is a proposal to amend the statutes for licensure of physicians in Montana to create a restrictive license to practice medicine for physicians who have been foreign-trained, but have attained a level of recognition greater than most in Montana. The reason for this legislation is, St. Patrick Hospital in Missoula in particular, has an opportunity to recruit a physician, Dr. Carlos Duran, who has a tremendous international reputation, to work with the Heart Institute. For about 5 years, St. Patrick Hospital in Missoula has had a Heart Institute that is gaining

MONTANA SENATE
1995 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
ROLL CALL VOTE

DATE 2/15/95 BILL NO. SB236 NUMBER _____

MOTION: Do pass as Amended

NAME	AYE	NO
LARRY BAER		X
SHARON ESTRADA		X
ARNIE MOHL	X	
MIKE SPRAUGE		X
DOROTHY ECK	X	
EVE FRANKLIN		X
TERRY KLAMPE	X	
STEVE BENEDICT, VICE CHAIRMAN	X	
JIM BURNETT, CHAIRMAN	X	

SEN:1995
wp:rlclvote.man
CS-11

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 1, 1995, at 3:00 p.m.

ROLL CALL

Members Present:
Rep. Duane Grimes, Chairman (R)
Rep. John C. Bohlinger, Vice Chairman (Majority) (R)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Deb Kottel (D)
Rep. Bonnie Martinez (R)
Rep. Brad Molnar (R)
Rep. Bruce Simon
Rep. Liz Smith (R)
Rep. Susan L. Smith (R)
Rep. Loren L. Soft (R)
Rep. Kenneth Wennemar (D)

Members Excused: Rep. Carolyn M. Squires (D)

Members Absent: None

Staff Present: David Niss, Legislative Council
Jacki Sherman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 158	
	SB 40	
	SB 236	
	SB 84	
Executive Action:	SB 55	DO CONCUR
	SB 120	DO CONCUR

{Tape: 1; Side: A; Approx. Counter: 000; Comments: n/a.}

in the report. If a full spectrum of services were developed these issues might need to be addressed, one of which was the licensing issue.

REP. SIMON asked what the bill was implementing. **SEN. WATERMAN** said this was a systemic shift in the way services were delivered and the way long-term care is viewed. This was a philosophical shift based on what people need, not on the services which are funded through Medicaid. Presently, services are driven for the elderly and disabled on what they are eligible for and who will pay for it. The kind of services they get depend on who is paying for it in the state of Montana, not necessarily on the services needed. This would be a fundamental reform.

REP. MARTINEZ asked how this would differ from the foster homes for the elderly. **SEN. WATERMAN** said they would be a part of the array. She told about a situation where an individual was left over the weekend in an adult day care facility due to an emergency. However, the facility was only licensed as a day care. This was a gap in the services, however, there needs to be that option available as part of the system.

Closing by the Sponsor:

SEN. WATERMAN closed on the bill. She said the bill sets the policy for an array of services.

{Tape: 2; Side: B; Approx. Counter: 000; Comments: n/a.}

HEARING ON SB 236

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, presented SB 236. She discussed the fundamental shift in the last biennium and the allocation of $1 million dollars to expand the community-based waiver for elderly and disabled in the state. They were able to provide some services to some brain-injured people and those people who were at risk of going into the nursing home. The home and community-based waiver will provide home and community services for people who would, without those services, end up in a nursing home. She said that SB 236 would bring Montana into compliance with federal laws concerning a state recovery. More importantly, it would preserve Medicaid funds for those who truly need those services.

She explained that Medicaid was established to assist low income people, yet it has become a first payer for not only Montanans, but Americans. SB 236 would prevent people from sheltering their assets. It would require recovery of Medicaid costs from the estates of Medicaid recipients. It would allow a lien to be placed on a recipient's home, but only if there is no spouse or no dependent children residing in that home at the time the lien is established. The lien can only be executed after the death of

the recipient. Depending on how the waiver is funded, the expansion of services available can happen. She pointed out the importance of planning for long-term care. The state cannot pay for everyone's long-term care. Medicaid dollars must be protected for those that are truly needy and can't afford the care.

Proponents' Testimony:

CHAIRMAN GRIMES noted that most of the proponents or opponents would testify on March 13th just prior to Executive Action. He said the reason for this is the hearing did not make it on the docket prior to the transmittal break so there were some people that would like to testify but were not able to make this meeting.

{Tape: 2; Side: B; Approx. Counter: 200; Comments: n/a.}

Peter Blouke, Director, Department of Social and Rehabilitative Services (SRS), testified in support of the bill. **EXHIBIT 10** He pointed out that this was not intended to deny Medicaid services or payment to individuals that meet Medicaid criteria. There can be some savings and an expansion of those community-based services.

Hank Hudson, Director, Department of Family Services, testified in support of the bill. He explained the department houses the state office on aging that provides services and advocacy to the aged. The issue on balancing people's responsibility to pay for their own long-term care and at the same time protect them from getting totally wiped out by long-term care costs is one that the department has wrestled with for a long time. They try to provide assistance to older people in planning and purchasing long-term care insurance and making decisions on how to manage their estate or approach the issue of paying for long-term care.

Bill Olson, AARP, testified in support of the bill. He said the AARP members are all volunteer. The success of the program is important to Montanans. **EXHIBIT 11**

Don Allen, Area Agency on Aging Association, testified in support of the bill. He pointed out the difficulties in the issue, but because of the tremendous costs involved if the issue is not dealt with could cause greater problems in the future.

Rose Hughes, Montana Health Care Association, spoke in support of the bill. She said that Medicaid was a program for the poor, yet 62% of the people in nursing homes are on Medicaid, yet 62% of the population is not poor. Many of the people on Medicaid had substantial assets that were sheltered. Those assets would have allowed some years of nursing home care to be paid for. She pointed out the bill would create some timeframes as far as the transfer of assets which would create some ineligibility for Medicaid. In effect, individuals will have to pay for some

portion of their care. There is not enough money for the state to continue to pay universal long-term care. In order to get a handle on costs, they should serve only those in need.

She pointed out that it cannot be controlled by simply not giving providers enough money to do that and for them to shift the costs. This bill would deal only with those in need. The portion of the bill that puts liens on people's homes is the most unpalatable part of the legislation. She discussed historical examples).

{Tape: 2; Side: B; Approx. Counter: 660; Comments: n/a.}

If a person says they are going to be returning to the home, then they are exempt and the state will not sell it. However, the state is still entitled to deal with that asset, but by the time they get to it, it might be sold or gone. The ability to put the lien on helps the state get what it is entitled to get back.

Kay Kosow Fox, Montana Low Income Coalition, testified in support of the bill. She said the coalition supports the bill because Medicaid is a program that is targeted for low income people. She pointed out that although this would close one of the loopholes, it provided a new specialty for estate, trust and probate attorneys to do earlier estate planning. People who have access to attorneys are going to do earlier estate planning. They will set up a trust and there are many ways of getting around the time limits in the bill. She pointed out that there will still be wealthier people that can use the legal system earlier. Many people that are low income will never inherit a home.

Ed Caplis, Montana Senior Citizens Association, testified in support of the bill. He said this was an emotional issue and included class warfare and legacy. It was a heated debate within whole senior citizen organizations. However, this is an issue of fairness. This is a welfare program. Those that can afford to pay for their care should do so.

Kate Cholewa, Human Services Foundation, said they support the bill. It would keep the dollars in the hands of those most in need.

Opponents' Testimony:

The opponents will testify on March 13th.

Questions from Committee Members:

REP. SOFT asked what percentage of the 62% were indigent.

{Tape: 3; Side: A; Approx. Counter: 000; Comments: n/a.}

Ms. Hughes replied that it was a question of whether the individual, during their lifetime, had the ability to purchase insurance or had sufficient assets that would have paid for at least some years of their care, and did they do some things to avoid paying for their care. She discussed a Washington study regarding methods to get the percent lower. **SEN. WATERMAN** said that statistics would show that 12% of the population is categorized as poor.

REP. SOFT asked about concerns raised with attorneys doing pre-estate planning. **SEN. WATERMAN** said there was a look-back period in the bill of three years for estates and five years for trusts which is federal law. This must be implemented.

REP. SQUIRES asked about secondary liens and how the state would have a priority. **Mr. Blouke** said the bill did not change any lien priorities that were currently in the law. **Greg Gould, SRS legal counsel,** said under this bill, the first people to file would have priority.

REP. SQUIRES asked if individuals had to save a certain number of dollars to do this for the lien, would it become criteria to be considered indigent. For example, if the city of Missoula had the first lien and it cost $12,000 and the house is worth $42,000, would they still be able to get on Medicaid even though they hold that $12,000.

Mr. Gould replied the lien provision does not affect their eligibility. For purposes of Medicaid, if someone owned a home and returned home, that is an exempt resource. The lien would be put on the home only if the person was permanently institutionalized and there were no spouse or children living there. He explained that what often occurs is that the home gets transferred away. Even though it is an exempt resource, it is not there later to recoup some of the Medicaid interests.

REP. SQUIRES asked about the federal legislation that was upcoming. **Mr. Gould** replied that the bill contained several different pieces. All of the federal legislation that authorizes what is in the bill is already on the books. The lien legislation has been on the books for a number of years and is an optional component under the law. Some of the pieces are mandatory. **REP. SQUIRES** asked if the lien portion would become mandatory later. **Mr. Gould** said no, and provided some background on the federal legislation.

{Tape: 3; Side: A; Approx. Counter: 200; Comments: The hearing for SB 286 resumed at the meeting of 3/13/95.}

EXHIBIT 10
DATE 3/1/95
SB 236

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

P.O. BOX 4210
HELENA, MONTANA 59604-4210

TESTIMONY OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES BEFORE THE HOUSE HUMAN SERVICES AND AGING COMMITTEE

RE: SB 236 - An Act Relating to Medicaid Estate Recovery and Liens.

SB 236 will implement changes in federal law which prevent individuals from becoming eligible for Medicaid long term care benefits by giving away or sheltering substantial assets. The bill would implement changes in federal law which require expanded recovery of medicaid expenditures from estates of deceased recipients and allow recovery of Medicaid expenditures from the recipient's property passing outside the probate estate. The bill would require SRS to place a lien upon real property owned by permanently institutionalized medicaid recipients to preserve the property for later recovery of Medicaid expenditures. This bill will not cause benefits to be denied to any citizen who truly does not have the resources to pay for long term care.

Previous federal law required a period of medicaid eligibility for long term care services when a person disposed of resources for less than fair market value during a certain time period. However, the federal law left several gaping loopholes. These loopholes have been exploited by some individuals to intentionally impoverish themselves so that medicaid pays for their long term care. The law also failed to adequately address multiple transfers and other issues. The result was that the penalties for uncompensated transfers were not significant enough to accomplish their purpose.

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) amended the transfer of assets law to close these loopholes, to increase the "look back" period from 30 months under previous law to 36 months (or 60 months if the transfer is to a trust) under the new law and to address certain inadequacies in the penalty provisions of the law.

The proposed bill would require SRS to deny eligibility for a period of time when a person has disposed of assets for less than fair market value during the applicable 36 or 60 - month "lookback" period. The bill requires SRS to establish and "undue hardship" exception process and criteria as required by federal law.

SRS currently operates a program to recover medicaid expenditures from estates of deceased recipients. OBRA '93 expands the medicaid expenditures which states must recover from estates. OBRA '93 also allows the state the option of recovering property of the deceased recipient which upon death passes outside the probate estate (for example, property held in joint tenancy with right of survivorship). This closes a significant loophole in prior law which allowed persons to avoid estate recovery by transferring assets into forms of ownership which bypass the probate estate.

The proposed bill would also implement federal law which allows the state to impose a lien upon the recipient's interest in real property for later recovery through the estate, or for recovery upon sale or transfer.

Montana Medicaid spent over $100 million on long term care services in FY 94. This represents about one third of the entire budget. Approximately 62 percent of nursing home residents are eligible for Medicaid to pay their nursing home

bill. This has placed a strain on state finances and will only get worse as more of our population becomes eligible for long term care services. This bill addresses the need for private financing of long term care and implements a solution for Montana.

Montana can save almost one million dollars or more in the up coming biennium and substantially more in future years by implementing and enforcing restrictions on asset transfers, imposing liens on property, and recovering benefits paid from recipients' estates. These savings derive from a combination of hard dollar recoveries and cost avoidance as more seniors choose private alternatives to long term care financing. The provisions of the bill are designed to target public welfare resources to those who need them most while providing a stronger incentive for seniors and their heirs to plan ahead for their long term care needs by purchasing long term care insurance or other private financing and avoid reliance on public funds.

You may recall that during the December, 1993 special session, similar legislation was introduced. (SB 39) The proposed bill passed the Senate and failed in the House. After the special session, the department met with representatives of over a dozen groups which had an interest in the legislation. The department has made many changes in this bill to accommodate the concerns these and other groups raised. These changes include referencing federal law when appropriate, providing clear protection for spouses and other dependent family members, clarifying the establishment of undue hardship provisions, as well as making the legislation less cumbersome.

At a time when the Medicaid program faces potential budget reductions in other areas which impact the access and payment of care for low-income recipients, this bill provides savings without impacting anyone except those who have the means to pay for their own care and their heirs. When many poor women and children below the poverty limit do not now qualify for Medicaid, it only makes sense that people an their heirs who can afford to pay for their own care no longer use limited public assistance dollars.

Passage of this legislation is critically important to our efforts to reform long term care in Montana. Savings resulting from this bill will help finance development of home and community services as alternatives to more costly institutional care.

On behalf of the Department of Social and Rehabilitation Services I urge you to pass HB 236. Thank you for the opportunity to provide these comments.

Submitted by:

Peter Blouke, Ph.D
Department of Social
and Rehabilitation Services

EXHIBIT 11
DATE 3/1/95
SB 236

AARP

Bringing lifetimes of experience and leadership to serve all generations.

MONTANA STATE LEGISLATIVE COMMITTEE

ACTING CHAIR
Mr. Lloyd Bender
2014 S. Tracy Avenue
Bozeman, MT 59715
(406) 587-0069

ACTING VICE CHAIR
Lloyd Erickson
4170 5th Avenue South
Great Falls, MT 59405
(406) 727-2951

SECRETARY
Vacant

AARP Testimony
Senate Bill 236
March 1, 1995

Mr. Chairman & Members Of The Committee:

For the record, my name is Bill Olson. Iam representing the American Association of Retired Persons. AARP is known for its supplemental medicare insurance and other national benefits.

However, I represent the 113,000 AARP members in Montana, and the hundreds of community service volunteers who are active in this state teaching drivers training, helping with income tax returns, counseling pre-retirees and helping widowed persons, among other programs. Not one member in Montana sells AARP insurance or has a paid position.We are all volunteers.

The Montana AARP State Legislative Committee(SLC) fought SB 39 in the last special session. Since then, we have had several working sessions with Senator Waterman and SRS concerning what we perceived as problems with that bill. We want to take this opportunity to thank Senator Waterman and the department for their patience and willingness to take our concerns into account.

Almost every concern we had has been taken into account. As a result, the Montana AARP Legislative Committee voted to support Senate Bill236.

We do have uneasy feelings about the rulemaking powers given the department in this very sensitive area.

Finally, we hope that the success of the recovery program is reflected in additional funds being appropriated for assisted living programs designed to keep elderly out of evpensive nursing homes.

For the record, I am submitting a statemenmt of the actions taken in this bill that addressed our major concerns.

We concur in this bill and urge you to give it a "Do Pass" recommendation.

Thank You.

William Olson

COMPARISON OF PROPOSED LIEN LAW WITH SB 39 OF SPECIAL 1994 LEGISLATURE

The law allows for recovery of the recipient and spouse's assets under certain instances.

1. Liens used prior to death only.

Allows use of liens prior to death only (a) to satisfy a court judgement, (b) to recover from third parties (such as insurance carriers, providers, etc.), and (c) in cases of institutionalized persons, including those in nursing homes longer than 6 months.

The SLC had concerns about liens on personal property of the surviving spouse. Liens are authorized only against the real property of living institutionalized recipients.

The SLC questioned the extent that the surviving spouse was liable for the debts of the deceased recipient. Clearly the surviving spouse is liable according to current law.

The SLC had concerns about impoverishment of surviving spouses, and recoveries from a large number of relatively poor individuals. A spousal exemption of up to $100,000 from the lien on real property is possible, depending upon the value of the property and the personal assets of the surviving spouse. Since eligibility includes consideration of assets (exempting the home) and requires a spend-down, the utility of this exemption may be moot.

In addition, the department can't collect on a lien so long as a surviving spouse or minor or disabled children are alive. This has been expanded beyond the original "so long as a surviving spouse lives in the home."

Furthermore, the amount, type and method of medicaid re-payment may be negotiated with the department.

The SLC had raised questions concerning dismissal from a nursing home. The lien is dissolved if and when a recipient is discharged from the facility and returns home.

The SLC wanted notices and nearings. State must give notice of intent to impose a lien and provide opportunity for a hearing.

The SLC wanted notification. Execution of the lien must be acknowledged.

The SLC raised the question of the order of the lien. The lien is prior to any earlier or subsequent recorded or unrecorded claim.

EXHIBIT 11
DATE 3-1-95
SB 236

2. Claims against estates used after death.

AARP policy is to limit recovery only to what is included in probate. The act expands recoverable assets to those outside probate as authorized but not mandated by Federal law.

The act allows recovery after death by filing a claim. Recoverable assets include everything owned at the time of death, including revocable trusts, life-time estates, bank accounts, etc. The act also authorizes recovery from survivors and divisees through court action.

The SLC wanted the timing of claims clarified. Claims are filed during probate creditor notice period.

The SLC raised questions concerning impoverishment. Department may give hardship waivers, and must notify surviving spouse of right to a waiver.

The SLC wanted a limit on execution time. Three-year time span to collect on a claim.

The SLC was concerned that the department would build up a claims bureaucracy using recovered funds. Claims recovered go to the general fund, not back to the department.

3. Personal funds of a deceased recipient held by a nursing home are confiscated by the department.

4. Excess burial funds of a deceased recipient are confiscated by the department.

5. The Act authorizes application of the same rules to public assistance recovery, and repeals Public Assistance Recovery, Recovery from Estates, and Old Age Assistance Recovery laws.

-----END-----

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 13, 1995, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Duane Grimes, Chairman (R)
Rep. John C. Bohlinger, Vice Chairman (Majority) (R)
Rep. Carolyn M. Squires, Vice Chairman (Minority) (D)
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Deb Kottel (D)
Rep. Bonnie Martinez (R)
Rep. Brad Molnar (R)
Rep. Bruce T. Simon (R)
Rep. Liz Smith (R)
Rep. Susan L. Smith (R)
Rep. Kenneth Wennemar (D)

Members Excused:

Rep. Chris Ahner (R)
Rep. Loren Soft (R)

Members Absent: None.

Staff Present: David Niss, Legislative Council
Jacki Sherman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 236 (continued from hearing of 3/10/95); SB 17
Executive Action:	SB 401 BE CONCURRED IN
	SB 310 BE CONCURRED IN

{Tape: 1; Side: A; Approx. Counter: 000; Comments: See minutes of 3/10/95 for opening remarks by sponsor and beginning of proponents' testimony for SB 236.}

CONTINUED HEARING ON SB 236

Proponents' Testimony:

Charles Briggs, Director of the Rocky Mountain Agency on Aging, stated that he was there as a member of the Long-Term Care Committee that was commissioned by the Governors' Council on Aging and as a member of SAIL (Seeking an Independent Lifestyle) Committee that was commissioned by the 53rd Legislature. He stated the concern of protecting the assets of the surviving spouse. SB 236 addresses the concerns of time limits for transfer of assets and provides a mechanism (lien) to recover specified expenses.

Opponents' Testimony:

Bob Bachini, Helena, strongly opposed this bill, stating that there were ways to get around it and middle income families would get picked on again. He felt the bill would not stop the rich from sheltering their assets. He questioned the term "reasonably necessary" and thought that it was too broad with too many gray areas. He quoted several sections of the bill that he was unhappy with. He introduced a petition as **EXHIBIT 1.** He said that this bill would not help contain the costs in the rest homes and this was not a fair bill. He was angry that there was no lien for the prisoners at Deer Lodge, but there was for the elderly who have paid their way all along.

Ed Sheehy, retired federal employee, has been active in several senior organizations and has worked on getting an affordable long-term care policy for this country. He said he was also opposed to this bill on a personal basis.

{Tape: 1; Side: A; Approx. Counter: 710; Comments: NA.}

Joe Brand, Montana State Legislative Chairman for the Veterans of Foreign Wars, stated that under current law someone would need to turn over their assets to a family member five years in advance in order for those assets not to be able to be taken away by the state if they were put in a nursing home. He said that if someone went on welfare or was placed in prison, the burden fell on the taxpayers, but the elderly who have paid taxes all their lives have no one to pay for them.

Jack Gunderson, expressed his displeasure that under the terms of this bill the state can at any time put a lien on someone who has been on welfare to recover any costs. His mother has been in a nursing home and has been able to pay for her own costs so far, but at $3,600 a month may not be able to for much longer.

{Tape: 1; Side: B; Approx. Counter: 20; Comments: NA.}

Dick Baumberger, Legislative Representative for Disabled American Veterans, expressed his concern that there was not enough money to cover funeral costs.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. BRUCE SIMON asked **Mr. Gunderson** if his mother was using her assets to cover the costs of being in a nursing home and he replied that she was. **REP. SIMON** stated that he didn't think it was fair that **Mr. Gunderson's** family had to use up their assets while someone else could give their assets to a family member and have the system pay for their care.

REP. TONI HAGENER asked if this bill related somehow to the Spousal Impoverishment Act. **Ms. Ellery** stated that the spouse of someone in a nursing home can keep up to about $1,900 a month in income and $72,666 in assets to meet their needs in the community. She said that the Social Security benefits that a person in a nursing home would receive would go to that nursing home except the $40 that is used for personal needs. If the patient is expected to return home their house is not included as an asset.

Closing by Sponsor:

SEN. MIGNON WATERMAN reiterated previous testimony on the bill and clarified that the lien only applies to the recipients' property if there is not a spouse living in that property or if there are not minor children. She added that this was a difficult piece of legislation and they need to prioritize the money given to cover long-term care.

{Tape: 1; Side: B; Approx. Counter: 320; Comments: NA.}

HEARING ON SB 17

Opening Statement by Sponsor:

SEN. TOM KEATING, SD 5, Billings, stated that he was presenting the bill as a matter of public health. He explained that the HIV (human immunodeficiency virus) is listed as a sexually transmitted disease but is not treated as such by the Department of Health or public health officers. Testing for HIV has been done anonymously and voluntarily. SB 17 would do away with the written informed consent and establish a procedure that the carrier be interviewed to determine and notify exposed partners so that they could be tested also. Confidentiality has always been and would remain a top priority. The only way to fight this disease is by early detection and early treatment. Two percent of the men and one percent of the women who apply to the military are carriers. He feels that more of the public would go to a

EXHIBIT 1
DATE 3-13-95
SB 236

(1)

WE THE FOLLOWING SENIORS OF Belgrade Senior COUNTY WANT TO GO ON RECORD AS OPPOSING A LIEN LAW IN THE STATE OF MONTANA

SIGNATURES	ADDRESS
Dick Lisman	109 Wagonwheel
Nancy J Johnson	606 N 5 707 7047
Francis Johnson	2920 Jimmy Rd Bozeman
Lucia Leander	P.O. Box 186 Fallon Drive
Elizabeth Marshall	3217 Belgrade MT. 59714
Elizabeth Hellkamp	700 Colorado Belgrade
Robert K Priest	1855 Montana Belgrade
Marylou Priest	1855 Montana Belgrade, MT
Betty Farr	704 Colorado, Belgrade
Ruth Bradley	700 Colorado, Belgrade
Edwin W. Nissen	95 Ruan, Belgrade
Richard Lee	3793 River Cat Rd Belgrade, Mt.
George Ellis	14925 - Rky Mtn. Road 59714
Dolores Dimond	14925 " "
Kristi Sisto	13613 Springtail Drive
Ella Mae Sharp	113 N Herman St.
Edna A. Clark	511 W. Central Apt. 20
Mae Markham	93 Grand
Billy B. Rash	5723 Park Ave Belgrade
Edith McCoy	PO Box 1195 Belgrade Mt.
Hattie Miller	P.O. Box 1195 Belgrade, Mt.
Alice M Gibson	PO Box 211 Belgrade MT 59714
Florence Dimond	703 W. Sullivan Hgts Belgrade Mt 59714
Velma Kegel	13999 Frontage Rd Belgrade Mt 59714
Lenadeth Neil	13999 Frontage Rd Belgrade MT 59
[illegible]	201 [illegible]

Exhibit 1 is a petition which consists of 4 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. Phone # 444-2694.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES & AGING

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 15, 1995, at 2:40 p.m.

ROLL CALL

Members Present:
Rep. Duane Grimes, Chairman (R)
Rep. John C. Bohlinger, Vice Chairman (Majority) (R)
Rep. Carolyn M. Squires, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Dick Green (R)
Rep. Antoinette R. Hagener (D)
Rep. Deb Kottel (D)
Rep. Bonnie Martinez (R)
Rep. Brad Molnar (R)
Rep. Bruce T. Simon (R)
Rep. Liz Smith (R)
Rep. Susan L. Smith (R)
Rep. Loren L. Soft (R)
Rep. Kenneth Wennemar (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Council
Jacki Sherman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 388	
Executive Action:	SB 209	DO CONCUR AS AMENDED
	SB 236	DO CONCUR AS AMENDED
	SB 223	DO CONCUR
	SB 158	DO CONCUR
	SB 134	DO NOT CONCUR AS AMENDED

{Tape: 1; Side: A; Approx. Counter: 000; Comments: n/a.}

federal dollars. A waiver is needed that will separate the mental health care services from all the rest.

REP. KOTTEL believed that this program will result in better coordinated services and increase better access to mental health care. The standard of care will rise also.

REP. SOFT clarified that the expansion services are in the area of mental health only. The sliding scale will be in effect for recipients to give their share.

REP. MOLNAR asked what the percentage of poverty levels were in bordering states. He raised the issue of people in bordering states coming over to Montana because of the higher poverty level.

CHAIRMAN GRIMES replied that community providers are the neutral party because they will be providing the services. This program will enable them to be better providers and more competitive and in tune to the needs of the clients.

REP. HAGENER supported the bill but stated her concern that a private management agency in an attempt to economize and make a profit will cause havoc in rural areas. Rural areas should not be overlooked in the development of these programs and services.

Vote: The motion carried 12-4 with REPS. MARTINEZ, MOLNAR, L. SMITH and S. SMITH voting no.

{Tape: 2; Side: B; Approx. Counter: 820; Comments: NA.}

EXECUTIVE ACTION ON SB 236

Motion: REP. JOHN BOHLINGER MOVED THAT SB 236 BE CONCURRED IN.

Discussion:

REP. BOHLINGER stated that 62% of the patients in nursing homes are on Medicaid and that some of the people on Medicaid are not poor. SB 236 is a way to recapture some of the public's investment in these people who have assets.

REP. GREEN supported the bill and said that anyone who can pay their bills ought to.

REP. L. SMITH opposed the bill and stated that the pressure should not always be coming from the state. It is not an incentive and there should be more support for people making these decisions.

{Tape: 3; Side: A; Approx. Counter: 00; Comments: NA.}

REP. MARTINEZ described what it is like for persons with a spouse in a nursing home and how they are made to spend all their spouse's assets down to $2,000 and keep a burial plan. All the rest goes to the home. The spouse out of the nursing home was allowed to keep the resources he had. She did not see the reason for the bill.

REP. S. SMITH asked if this bill would encourage the grown children of parents going into a nursing home to care for them at home in order to preserve their estate.

REP. SOFT replied that the purpose of the bill is to do just that.

REP. SIMON told the committee about when his mother was placed in a nursing home and how he saw people who could pay their bills but had transferred their assets and went on Medicaid. Taxes are paying for Medicaid and families need to be responsible for their own.

REP. HAGENER mentioned that she had a real problem with SB 236. It is not mandated by the federal government and there are already mechanisms in the law to go after property if need be. The wealthy will still be able to transfer their assets and the low income population will be targeted. Spousal impoverishment is supposed to provide some protection but in reality does not.

REP. MARTINEZ stated that all money and property can be traced.

REP. S. SMITH is reluctant about the bill but these people have given to society and deserve to be helped.

REP. BERGMAN said that this bill would go after the people who do have assets and are not using them. She asked what was the solution for the great amounts of money that Medicaid is putting out into nursing homes.

REP. HAGENER replied that nursing homes are not shy about going after money and assets and that assets can be traced.

CHAIRMAN GRIMES stated that anyone can still make a transfer if it is five years from the date of entering a nursing home.

REP. KOTTEL discussed the section of the bill where $5,000 can be placed in a burial trust fund but what is not used goes to the state. The money that is left over is needed by the family. She has an amendment that would allow someone to place up to $5,000 into a burial trust fund and what is left over would remain with the family.

Mr. Niss confirmed that the amendment would do just that.

Motion: REP. DEB KOTTEL MOVED TO AMEND SB 236.

Discussion:

REP. SIMON asked if the amendment would encourage cremation as it is a much less expensive way of burial and thus the family would receive more back from the trust.

REP. KOTTEL replied that if there are last minute expenses it might be taken into consideration how that burial money is used.

Vote: **The motion carried 13-3 with REPS. MOLNAR, SIMON and S. SMITH voting no.**

Motion: **REP. JOHN BOHLINGER MOVED THAT SB 236 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. L. SMITH said that the reality was that if family members were not taking care of the elderly then the nursing homes would need to. She felt the committee was not dealing with reality.

REP. GREEN gave personal testimony about his experience with his mother being in a nursing home. He described the selfishness of the individuals who want to keep their parents' money instead of paying for the nursing home care.

REP. L. SMITH reiterated that in Colorado there is a five year requirement for the transfer of assets.

REP. SOFT mentioned that the bill also enacts the five year requirement.

Vote: **The motion carried 11-5 with REPS. SQUIRES, AHNER, HAGENER, MARTINEZ and L. SMITH voting no.**

{Tape: 3; Side: A; Approx. Counter: 930; Comments: NA.}

EXECUTIVE ACTION ON SB 158

Motion/Vote: **REP. CHRIS AHNER MOVED THAT SB 158 BE CONCURRED IN. The motion carried unanimously.**

{Tape: 3; Side: B; Approx. Counter: 00; Comments: NA.}

EXECUTIVE ACTION ON SB 134

Motion: **REP. KEN WENNEMAR MOVED THAT SB 134 BE CONCURRED IN.**

Motion: **REP. DEB KOTTEL MOVED TO AMEND SB 134. EXHIBIT 7**

Motion: **REP. KEN WENNEMAR MOVED TO SEGREGATE REP. KOTTEL'S AMENDMENT.**

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Human Services and Aging Committee

DATE 3-15-95 BILL NO. SB 236 NUMBER _____

MOTION: Rep. Bohlinger "Do Concur" as Amended.
Rep. Kottel moved amendment - amendment passed.

NAME	AYE	NO
Rep. Duane Grimes, Chairman	✓	
Rep. John Bohlinger, Vice Chairman, Majority	✓	
Rep. Carolyn Squires, Vice Chairman, Minority		✓
Rep. Chris Ahner		✓
Rep. Ellen Bergman	✓	
Rep. Bill Carey	✓	
Rep. Dick Green	✓	
Rep. Toni Hagener		✓
Rep. Deb Kottel	✓	
Rep. Bonnie Martinez		✓
Rep. Brad Molnar	✓	
Rep. Bruce Simon	✓	
Rep. Liz Smith		✓
Rep. Susan Smith	✓	
Rep. Loren Soft	✓	
Rep. Ken Wennemar	✓	
	11	5